No. 379

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IN THE

DISTRICT COURT OF APPEAL

THIRD DISTRICT

PAN-AMERICAN LIFE INSURANCE COMPANY,

Appellant,

vs.

MARIE LORIDO,

Appellee,

PARTIAL TRANSCRIPT OF RECORD

William P. Carter,
Clerk.

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Appellant,

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APPENDIX TO APPELLANT'S BRIEF

APPENDIX

AMENDED COMPLAINT (Record 1)

(Caption and exhibits omitted)

The plaintiff, MARIE LORIDO, by her undersigned attorneys, sues the defendant, PAN-AMERICAN LIFE INSURANCE COMPANY, and says:

1. That the Defendant is a corporation, organized and existing under the laws of the State of Louisiana, and doing business in the State of Florida.

2. That plaintiff, MARIE LORIDO, is the wife of

JOSE LORIDO LOMBARDERO, now deceased, and the beneficiary named in Policy No. 381-315 on the life of the said JOSE LORIDO LOMBARDERO.

3. That on November 22, 1943, at Havana, Republic of Cuba, in consideration of the payment of the premium of $466.25 annually during the term of 25 years, the Defendant, by its agents duly authorized thereto, executed its policy of insurance No. 381-315 in writing to JOSE LORIDO LOMBARDERO on his life in the sum of $5,000.00, a copy of which policy has been annexed to the original Complaint herein and marked Exhibit "A" and which by reference is made a part of this Amended Complaint and an English translation of the said policy is annexed hereto and marked Plaintiff's Exhibit "B".

4. That as a further provision of the said policy of insurance, an appendix thereto called for the establishment of a fund amongst a certain class of insureds of the Defendant, to be distributed at the end of ten years, at which time the accumulation of the fund would be divided amongst the surviving members of the said class of insureds.

5. That as a further provision of the said policy of insurance an appendix thereto called for the establishment of a fund amongst a certain class of insured of the Defendant to be distributed at the end of fifteen years, at which time the accumulation of the fund would be divided amongst the surviving members of the said class of insureds.

6. That the said contract of insurance further contained a series of 20 coupons attached thereto which, un-

der the provisions of the policy might be used to reduce the annual premiums or be left with the company to accumulate with compound interest at the rate of 3-1/2% per annum.

7. That on October 6, 1960, in Havana, Cuba, the insured, JOSE LORIDO LOMBARDERO, died.

8. That up to the time of the death of the insured, all premiums accrued upon said policy were fully paid.

9. That the insured, JOSE LORIDO LOMBARDERO, and Plaintiff, each performed all the conditions of said insurance on their part to be performed and the Plaintiff, prior to the commencement of this action, gave notice to the Defendant of the death of the said JOSE LORIDO LOMBARDERO, and demanded payment of the principal sum of $5,000.00, the face value of the policy, and the further sums due under the above terms and provisions of the said policy.

10. That the sums have not been paid nor any part thereof and that the insurer has further refused to furnish the beneficiary with forms for proof of death as required by the terms of the policy.

11. That there is now due and payble to the Plaintiff from the Defendant the face value of the policy of $5,000.00 plus interest; plus $2,142.00 together with interest on said sum compounded annually at the rate of 3-1/2% from the date of the execution of the policy on the coupon privileges of the said contract of insurance and in addition there is a sum due and owing to the Plaintiff from the Defendant, as proceeds of the aforementioned

funds as set forth in Paragraphs 4 and 5, which amounts are unknown to the Plaintiff and for which the Plaintiff demands accounting from the said Defendant.

WHEREFORE, Plaintiff sues the Defendant and demands the following:

1. Damages in the amount of $5,000.00 plus interest, and

2. The further amount of $2,142.00 with interest thereon compounded annually at the rate of 3-1/2% from the date of execution of the policy; and

3. The sums due and owing under the aforementioned special funds together with interest thereon; and

4. Reasonable attorneys fees for the prosecution and collection of the loss under said policy of insurance as provided by §627.0127 F. S. 1959; and

5. Costs of this action, and

6. An accounting of the insurer of the sums due under the aforesaid special funds.

STUART, MUNSON & FRIED
Attorneys for Plaintiff
340 Ingraham Building
Miami 32, Florida

/s/ RAY A. MUNSON

BY_____

WE HEREBY CERTIFY that a true copy of the foregoing Amended Complaint was mailed to MESSRS. DIXON, DeJARNETTE, BRADFORD, WILLIAMS, McKAY & KIMBRELL, Dade Federal Building, Miami, Florida, Attorneys for Defendant, this 5th day of April, A. D. 1961.

STUART, MUNSON & FRIED
BY /s/ RAY A. MUNSON

ANSWER OF DEFENDANT, with part of one exhibit. (Record 24)

Comes now the defendant, PAN-AMERICAN LIFE INSURANCE COMPANY, and for answer to the amended complaint filed herein says:

1. The amended complaint fails to state a cause of action against the defendant or a claim upon which relief can be granted.

2. The defendant admits the allegations of paragraphs 1, 2 and 3 of the amended complaint, except that it denies that Exhibit "B" is a correct translation of Exhibit "A".

3. For answer to paragraphs 4 and 5 of the amended complaint, defendant admits the same insofar as they are consistent with Exhibit "A", but says that the insured has been paid all sums due him under the sections of Exhibit "A" applicable thereto, and that no sums are due and payable under the applicable provisions of said policy.

4. The defendant admits the allegations of para-

graph 6 of the amended complaint, subject to the affirmative allegations hereinafter contained in this answer.

5. For answer to paragraph 7 of the amended complaint, the defendant says that it has not been furnished with any proof of the fact or date of death of the insured, except that it has been informed verbally by its former agent in Havana, Cuba, that he knows the insured died after September 29, 1959, and prior to the institution of this suit.

6. For answer to paragraph 8 of the amended complaint, the defendant admits the same.

7. Subject to the allegations of paragraph 5 of this answer and to the affirmative allegations hereinafter contained in this answer, the defendant admits the allegations of paragraph 9 of the amended complaint.

8. For answer to paragraph 10 of the amended complaint, the defendant admits the same, but says that because of the facts hereinafter alleged it has referred the plaintiff to the administrator hereinafter mentioned for the purpose of obtaining the forms mentioned.

9. For answer to paragraph 11 of the amended complaint, the defendant denies the same.

10. Further answering the amended complaint, the defendant says:

(a) That prior to the effective date of Law No. 13 of 1948 of the Republic of Cuba, both the Cuban peso and the United States dollar were legal tender in

Cuba, but that subsequently, as the defendant is informed and believes, the Republic of Cuba, by the Monetary Decree of 1951, promulgated in pursuance of said Law No. 13, required all contracts theretofore payable in dollars to or by Cuban Nationals in Cuba to be payable in Cuban pesos.

(b) The insured, on or about August 15, 1952, agreed with the defendant that the policy described in the amended complaint should be modified so that obligations payable thereunder by either party should thereafter be payable only in Cuban pesos.

(c) The defendant has been admitted to do a life insurance business in Cuba since 1913, and in pursuance of Cuban laws encouraging concerns situated as the defendant was to invest their assets in Cuba, as far back as the 1930s, the defendant had invested in Cuban properties and securities all of its reserves, and more, against business written or liabilities incurred in Cuba, so that, at the times hereinafter alleged, the properties owned by the defendant in Cuba far exceeded its liabilities in Cuba.

(d) On or about September 29, 1959, after the Castro government came into power in Cuba, Law No. 568, was promulgated by the Cuban government, which, in substance and effect, prohibited the defendant from paying any moneys to Cuban Nationals anywhere except in Cuba, or even making any entries in its books of account which would result in credits being made available to Cuban Nationals except in Cuba.

(e) On or about October 24, 1960, the Cuban

government promulgated Resolution No. 3, a true and correct translation into English whereof is attached hereto as Exhibit No. 1, which in substance and effect provided for the forcible expropriation of the Cuban business of the defendant, vested title to all of defendant's Cuban assets in the Cuban government, and substituted the Cuban government as the obligor on all of defendant's Cuban liabilities and contracts, among which is the policy of insurance herein sued on.

(f) The contract herein sued on is a Cuban contract, the application therefor was taken in Cuba, delivery thereof was made in Cuba to a Cuban National, after notarization thereof in Cuba in accordance with Cuban law, the place of performance, thereof, both as to payment of premiums and as to payment of benefits thereunder is in Cuba, and the assets reserved by the defendant for the payment by the defendant of its liabilities thereunder were physically located in Cuba and seized by the Cuban government.

(g) After the expropriation effected by Resolution No. 3, above mentioned, the Cuban government, through the administrator therein referred to, has collected premiums on policies issued by the defendant before the date of expropriation, has collected agents' balances due on defendant's Cuban business and has sought to collect policy loans outstanding on policies issued by defendant prior to such expropriation (though with what success defendant does not know) and has not remitted to the defendant the proceeds of such collections.

(h) The Cuban government, through the administrator therein referred to, has paid claims accruing

on policies issued by defendant prior to such expropriation, has issued further policies in defendant's name, and has in all things substituted itself in the place and stead of the defendant on both past, present and future transactions with its own Nationals.

(b) By reason of the facts aforesaid, the defendant has been relieved of its obligations to Cuban Nationals on policies issued as aforesaid.

11. Further answering the amended complaint, the defendant says that the plaintiff is an alien and entitled to use the courts of the State of Florida only as a matter of comity, that the Cuban courts are no longer open to United States citizens seeking to enforce their contracts there against residents of Cuba, and that by reason of this lack of comity on the part of Cuba, a reciprocal comity will not permit the use of the courts of this state by the plaintiff.

12. Further answering the amended complaint, the defendant says that the purpose and effect of the transactions mentioned in the amended complaint have been frustrated and the defendant thereby released from liability therefor.

DIXON, DeJARNETTE, BRADFORD, WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Bldg.,
Miami 32, Florida,

By: s JAMES A. DIXON
Attorneys for Defendant.

I CERTIFY that on this 25th day of April, 1961, a true copy of the foregoing Answer was mailed to STUART, MUNSON & FRIED, attorneys for the plaintiff herein; 340 Ingraham Building, Miami 32, Florida.

-s/ JAMES A. DIXON

PORTIONS OF RESOLUTION NO. 3

"RESOLUTION NO. 3

"WHEREAS, The Imperialist interests whose representatives control the Government of the United States of North America, in their intention to utilize every means which they consider effective to impede the consolidation of the Cuban Revolution, have continued committing aggressions, every day more unscrupulous and criminal, against the economy of the nation.

"WHEREAS: Among the multiple measures adopted by the Government of the United States of North America, there stands out for its exceptional aggressiveness that of the general embargo on exportations from that country to Cuba with the intention of strangling our economy.

"WHEREAS: That measure in addition to violating the most elemental standards of international existence, constitutes an act of political coercion with which it pretends uselessly to weaken the popular force of the Cuban Revolu-

tion by creating difficulties for national supplies.

"WHEREAS: It is evident that this conduct of the Government of the United States of North America reveals the desperation and impotence of imperialism conducted by that Government; each day with more virulence, to employ the most unjust aggressions against our country.

"WHEREAS: It is the duty of the Revolutionary Government to defend the economy of the country.

"WHEREAS: Moreover, it is fundamental for the liberation and economic development of our country that the North American commercial and industrial firms be liquidated which presently constitute the remainder in our country of the financial capital of that country.

"THEREFORE: In use of the powers with which we are vested, in accordance with the provisions of Law No. 851 of June (sic July), 1960.

"RESOLVED

"FIRST: There is declared the nationalization by means of forced expropriation, and, consequently, there are adjudged in favor of the Cuban State in full dominium all the properties and firms located in the National Territory and the rights and actions resulting from the exploitation of these properties and concerns which

are the property of natural and juridical persons, nationals of the United States of America or operators of firms in which nationals of that country have a predominant interest, as follows:

* * * *

"Group XX — Insurance Companies
"Pan-American Life Insurance Co.

* * * * *

"SECOND: Therefore, the Cuban State is declared subrogated in place and grade of the natural and juridical persons referred to in the preceding section with respect to the properties, rights and rights of action mentioned, as well as the assets and liabilities constituting the capital of the concerns referred to.

"THIRD: It is declared that these forced expropriations are effected for reasons of necessity and public use and national interest mentioned in the Whereas clauses of this Resolution."

REQUEST FOR ADMISSION NO. 4 (Record 64)

(Caption omitted)

The defendant, PAN AMERICAN LIFE INSURANCE COMPANY, requests the plaintiff named in the caption hereof, on or before November 25, 1961, to make the following admissions for the purpose of this action

only and subject to all pertinent objections to admissibility which may be interposed at the trial:

* * * * *

4. That the policy of insurance herein involved was issued upon an application therefor made in Cuba, that delivery thereof was made in Cuba, and that notarization thereof was made in Cuba prior to delivery thereof.

PLAINTIFF'S REPLY TO REQUEST FOR ADMISSION No. 4 (Record 113)

(Caption omitted)

The Plaintiff, replying to Request for Admissions heretofore served upon her by Defendant, says as follows:

* * * * *

4. Admitted.

ORDER ON MOTION FOR PROTECTION (Record 115)

(Caption omitted)

This cause came on to be heard upon the plaintiff's Motion for Order of Protection, and during the course of said argument counsel for the defendant stated that the only matter which he wished to establish by the deposition of the plaintiff mentioned in said motion was that she and her husband were citizens and Nationals of the

Republic of Cuba up to and including October 24, 1960, and counsel for the plaintiff in open court stipulated that the plaintiff and her husband were up to and including October 24, 1960, citizens and Nationals of the Republic of Cuba. Whereupon, counsel for the defendant stated that with this stipulation there was no occasion to take said deposition, and the Court being fully advised in the premises, it is, therefore,

ORDERED and ADJUDGED that the plaintiff's Motion for Protective Order be granted.

DONE and ORDERED at Miami, Dade County, Florida, this 22nd day of December, 1961.

s HAL P. DEKLE
CIRCUIT JUDGE.

PRE-TRIAL ORDER (Record 116)

(Caption omitted)

This cause came on to be heard upon a Pre-Trial Conference, during the course of which it was STIPULATED between counsel for the respective parties as follows:

1. That the form of policy in English filed by the defendant in response to the interrogatory propounded by the plaintiff is a true and correct translation of the policy herein involved, and that copy or a duplicate thereof may be received in evidence without other proof.

2. That the insured, JOSE LORIDO, died on October 6, 1960.

3. That the English translations of the Cuban laws attached to the defendant's Requests for Admissions are true and correct translations of the laws referred to and may be admitted in evidence without other or further proof of the correctness of the translation subject, however, to proof by the defendant of the existence of the laws of which they purport to be translations.

4. That affidavits of two practising lawyers in Dade County, Florida, as to the amount of attorneys' fees may be received in evidence without the production of the affiants on the witness stand, but the defendant reserves the right to object to the allowance of any attorneys' fees whatever in this case, even though the plaintiff be successful.

DONE and ORDERED at Miami, Dade County, Florida, this 5th day of January, 1962.

s HAL P. DEKLE
CIRCUIT JUDGE.

EXCERPTS FROM TESTIMONY OF DR. FRANCISCO FIGUEROA (Record 198)

"DIRECT EXAMINATION

BY MR. DIXON:

Q Will you please state your name.
A Francisco Figueroa.

Q Where are you presently residing?
A In Miami.

Q What is your nationality?
A Cuban.

Q What has been your educational background?
A Well, elementary and high school education in Cuba and in the States in Pennsylvania, and then Doctor in Law at Havana University, and LLB degree at Tulane University in 1934.

Q And since 1934, what has been your occupation or profession?
A Practicing attorney.

Q And where?
A In Havana with the firm of Lazo Y Cubas.

Q And can you give the Court any idea of the size of that firm?
A Well, when we had to close and leave Cuba we were 22 lawyers.

Q Have you done any work in any specialized field?

MR. MUNSON: Does that make him a better lawyer, Mr. Dixon?

MR. DIXON: It shows that they have been successful.

MR. MUNSON: That is problematical. Go ahead.

Q (By Mr. Dixon) Have you specialized in any particular field of law?
A Yes. For the different fields during the years.

I mean, railroad law, insurance and contracts, operation of law in general.

* * * *

Q (By Mr. Dixon) Dr. Figuero, have you familiarized yourself with Law No. 568 of September, 1959?

A Yes.

Q Do you have the Spanish text and the English translation of that law?

A Yes, sir. It is the law of 1968.

MR. MUNSON: 1968?

THE WITNESS: 568. I am sorry. Law 568, September 23rd, 1959, published in the Official Gazette of September 29, 1959.

Q (By Mr. Dixon) Have you compared the English translation with the Spanish text?

A Yes.

Q Does the English translation correctly reflect the substance of the Spanish text?

A It does.

MR. DIXON: We offer it in evidence.

* * * *

Q (By Mr. Dixon) Dr. Figuero, have you familiarized yourself with the Spanish text of the expropriation decree of October 24, 1958?

A Yes.

Q Do you have the Spanish text here and the English translation?

A We have the English translation and the Spanish text published by this publication called Leyes del Gobierno Provisional de la Revolucion. It is not the official— The official publication is the Official Gazette.

Q What is the nature and function of the book which you hold in your hand, and how is it used?

A Well, this book—this book was published right after January 1st, 1959, when Castro came into power and they started to issue new laws, and to familiarize—I mean, to get to the interested parties, the attorneys, the justices and everybody— I mean, this is sort of a compilation, a monthly compilation of all those laws.

Q Is that generally used and accepted by Cuban Bar as being the correct statement of decrees issued by the government?

A Yes, yes. I have had opportunities in many cases because, unfortunately, many of our clients were affected by this resolution, the resolution of the President of the Republic, and I have worked many times with this booklet after, of course, having checked with the Official Gazette.

Q And is the booklet which you hold in your hand, is that your property or the property of some others?

A It is the property of the University of Miami. Dr. Riverend.

Q It has been borrowed from them?

A Yes.

MR. DIXON: If the Court please, we would at this time request— We will offer the book, or that portion of the book which embodies Resolution No. 3, together with the English translation, and I would like to substitute a photostatic copy of the English text so that the book itself can be returned to the University of Miami.

MR. MUNSON: I don't see any objection to that, your Honor, subject to my usual objection.

THE COURT: All right, then, the English translation of it— You need not submit the book at all. I don't believe it will serve any purpose at this time.

MR. MUNSON: That is the same as Resolution No. 3, Mr. Dixon?

MR. DIXON: Yes.

THE COURT: This is the Resolution No. 3, what I would refer to as the infamous resolution with regard to confiscation generally by the Castro regime.

MR. DIXON: This one names specific companies.

THE COURT: And it includes this defendant?

MR. DIXON: Yes, sir. It refers to Pan American Insurance Company in Paragraph 20. This one names the specific American companies and expropriates their assets.

We will offer that in evidence.

* * * *

BY MR. DIXON:

Q Dr. Figueroa, I have only two further questions of you that I can think of now. One is this: Under the law of Cuba, what effect did the Resolution No. 3 which you have identified have upon the relationship between the insured or the beneficiary and the Pan American Life Insurance Company?

MR. MUNSON: Objection, your Honor. Now, this is a matter for the interpretation of the Court and not for an expert witness.

We stipulated that we would permit these lawyers from Cuba to testify as expert witnesses in connection with the admissibility of particular laws, but he is drawing a legal conclusion. It is only permissible for a judicial tribunal to rule on.

THE COURT: I will consider his answer only as advisory only. I will overrule the objection.

THE WITNESS: Well, the Resolution No. 3, the effect of Resolution No. 3 was to subrogate and place instead of Pan American Life Insurance Company, in this case, which is specifically mentioned in Resolution No. 3, the Cuban government who would take over the assets, the properties—assets and liabilities. They would assume the liabilities of the company and everything as a consequence of the expropriation and nationalization of this company.

The Cuban government— the Banco de Seguros Sociales de Cuba in this case would go ahead and was au-

thorized by Resolution No. ? to record in their name in the mercantile registries and companies—all the company's property, everything concerning the company in Cuba.

So they are and they continue in Cuba with that business. I mean Pan American—I mean that certain activities of Pan American Life Insurance or the other companies have been continued by the government and serviced by the government. So I would say that the government has subrogated and is in place instead of Pan American Insurance as the insurance company with respect to the insured. Especially where—of course, not especially but, of course, contracts issued in Cuba to a Cuban citizen, which is considered—it is a Cuban contract issued by the Havana office.

Q (By Mr. Dixon) Is it the substance of your answer, then, that the Cuban government is liable, if anyone is, on this contract?

A Yes."

EXCERPT FROM TESTIMONY OF DR. EDUARDO LE RIVEREND (Record 235)

"DIRECT EXAMINATION

BY MR. DIXON:

Q Please state your full name and present place of residence.

A Eduardo le Riverend, and my address is 550 Southwest 7th Street, Miami.

Q Doctor, are you a citizen and national of Cuba?
A Yes, by birth.

Q And will you tell us what your educational background has been?

A Well, I was in elementary school in Cuba, high school in Cuba, and I have my degree as a doctor in civil law from the University of Havana in 1928.

Q And what has been your experience in the practice or teaching of law?

A Teaching. Well, since 1938 up to the 14th of January, 1959, I was a professor of civil law in the University of Havana, and besides, I was invited two or three times by the University of Miami to deliver some lectures on different matters.

Q Have you ever held any official position in the Republic of Cuba?

A Yes. Well, this was an official position in the University of Havana, but besides—

Q Have you held any other position?

A Since the 14th of January until the 19th of December—January, 1959, up to the 19th of December, 1960, when I resigned, I was Associate Justice of the Supreme Court of the Republic of Cuba.

Q Doctor, you have been present in the room and have heard the testimony that has been offered here as to the transaction relating to this policy of insurance?

A Yes.

Q Will you please tell us what effect on the Cuban

law Resolution No. 3 would have upon the Republic between the Par American Insurance Company and either its insured or the beneficiary in the policy presently involved in this cause.

MR. MUNSON: Your Honor, I will make the same objection that I made before. This case is being tried under the law of Florida. The policy plainly recites that performance of the policy is to be made in New Orleans, Louisiana, and the payments would be made in dollars and cents, and the benefits thereof will be paid in Louisiana in dollars and cents.

The law of Cuba is inapplicable in this matter and is immaterial in this case.

THE COURT: Overruled. You may answer.

THE WITNESS: I think Resolution No. 3 is very clear. It states that this resolution was issued by the President of the Republic in compliance with a previous law, No. 8051, July, 1960. The resolution is dated the 24th of October, 1960. It states in the first paragraph and it orders the nationalization by means of expropriation and by consequences going to the Cuban state in full property all belongings, all goods and property and firms situated in the national territory and the rights and rights of action coming from the exploitation of said businesses which are the property of North Americans or natural persons, and then he states the numbers and lists the complete list of the firms which were expropriated.

Paragraph No. 2 expresses this very clearly:

"'Consequently, it is declared that the Cuban state is subrogated in stead of the natural and jurisdictional persons referred to in the preceding section with respect to the properties, rights, and rights of actions above mentioned, as well as receipts and liabilities which form the capital of the said firms.'

So, in my opinion, inasmuch as this resolution doesn't say that these firms have to go out from the country'— no, they just put instead of such firms, some other entity which is the Cuban state represented by the Cuban government. From now on, from this date or from the date in which this resolution was applied to any company, instead of such company you may go to the Cuban government and present any right that you think of against those companies and the government has to comply with the contracts and go ahead between— In this case, between the insured person and the company. So the Cuban government is in the place of the insurance company."

TEXT OF LAW NO. 568 of September 29, 1959.

NOTE: This appears in the record twice, — first, as part of defendant's request for admission (Record page 64) and second, as an exhibit introduced in evidence at the trial. The first record reference is page 98, the second is at page 210, where the text of this law was admitted into evidence as Defendant's Exhibit J.

"I, Osvaldo Dorticos Torrado, President of the Republic of Cuba, do hereby proclaim that the following law has been enacted by the Council of Ministers and approved by me, to wit:

WHEREAS: Title II of Law No. 13 of December 23, 1948, provided for the organization of the Currency Stabilization Fund, and entrusted it with the fundamental mission of protecting the national currency on the exchange market, for which purpose the legislation supplementary thereto broadened the scope of its powers vesting it with the authority necessary for the regulation of international exchange transactions.

WHEREAS: During the years in which the tryanny was in power a constant drainage of foreign exchange was propitiated to cover the funds taken away by the beneficiaries of the deposed government, a practice which some interested parties are still trying to continue through speculation and by deviating the channels of incoming foreign exchange on which the nation depends, or by the remittance of foreign funds through illegal methods, thereby ostensible delaying the restoration of our monetary reserves and the preferential application of the national resources to the economic development of the nation.

WHEREAS: It is necessary therefore, to define clearly and precisely the felonious acts constituting crimes against the economy of the na-

tion, fixing the penalties applicable to the different degrees of criminal liability, and to confer upon the Currency Stabilization Fund and the judiciary the broad powers required for the protection of the general interests of the Republic.

NOW, THEREFORE: In pursuance of the powers vested in it, the Council of Ministers has resolved to enact the following

LAW NO. 568

Article 1.—For the purposes of this law, the following are considered felonies of monetary contraband:

* * * *

(6) To export currency or securities, or to transfer funds to points abroad by means of checks, transfers, drafts, letter-orders, orders of payment, compensations, traveller' checks, letters of credit, reimbursements of collections, purchases or sales of passage tickets or through any other similar means, regardless of the origin or source of the funds, except for those cases authorized by the Currency Stabilization Fund, through a member bank or a firm duly authorized by Banco Nacional de Cuba.

7) To export or import national currency in excess of the limit that set now or hereafter by the Currency Stablization Fund.

8) To establish credits in national currency for persons residing abroad or for residents of Cuba for the account of residents abroad.

9) To assign or transfer credits in national currency to residents abroad, make payments for their account in national currency and set up credits in bank accounts the holders whereof reside broad without first complying with the rules issued by the Currency Stabilization Fund in this respect.

10) To receive and credit to bank accounts kept abroad, or to transfer to third parties collections made abroad for business transacted or services rendered in Cuba, regardless of the source or origin of the respective funds.

* * * *

Article 2. — The persons guilty of the felony of currency contraband referred to in the preceding article shall be liable to a penalty of imprisonment for from 6 months and 1 day to 3 years, or a fine of one to two thousands quotas, or both.

If the felony is committed by directors, representatives, officers or employees of banks, corporations, or artificial persons while acting in pursuance of their functions as such, the penalty shall be increased from one fourth to one half, in the discretion of the Court, and the firm to

which they belong will be subsidiarily liable for the cash penalties imposed.

Article 3. — a) Any person who sells or in any way assigns, transfers or transmits currency, checks, drafts, orders of payment, travellers' checks or any similar paper in foreign currency shall be liable to imprisonment for from 6 months and 1 day to 3 years, or to a fine of one to two thousand quotas, or both."

PORTIONS OF TEXT OF RESOLUTION NO. 3 OF OCTOBER 24, 1960.

NOTE: The full text of this Resolution appears in the record twice, — first as a part of defendant's request for admissions and second, as an exhibit admitted in evidence at the trial as Defendant's Exhibit K (Record page 213).

"RESOLUTION NO. 3

"WHEREAS, The Imperialist interests whose representatives control the Government of the United States of North America, in their intention to utilize every means which they consider effective to impede the consolidation of the Cuban Revolution, have continued committing aggressions, every day more unscrupulous and criminal, against the economy of the nation.

"WHEREAS: Among the multiple measures adopted by the Government of the United States

of North America, there stands out for its exceptional aggressiveness that of the general embargo on exportations from that country to Cuba with the intention of strangling our economy.

"WHEREAS: That measure in addition to violating the most elemental standards of international existence, constitutes an act of political coercion with which its pretends uselessly to weaken the popular force of the Cuban Revolution by creating difficulties for national supplies.

"WHEREAS: It is evident that this conduct of the Government of the United States of North America reveals the desperation and impotence of imperialism conducted by that Government; each day with more virulence, to employ the most unjust aggressions against our country.

"WHEREAS: It is the duty of the Revolutionary Government to defend the economy of the country.

"WHEREAS: Moreover, it is fundamental for the liberation and economic development of our country that the North American commercial and industrial firms to be liquidated which presently constitute the remainder in our country of the financial capital of that country.

"THEREFORE: In use of the powers with

which we are vested, in accordance with the provisions of Law No. 351 of June (sic July), 1960.

"RESOLVED

"FIRST: There is declared the nationalization by means of forced expropriation, and, consequently, there are adjudged in favor of the Cuban State in full dominium all the properties and firms located in the National Territory and the rights and actions resulting from the exploitation of these properties and concerns which are the property of natural and juridical persons, nationals of the United States of America or operators of firms in which nationals of that country have a predominant interest, as follows:

* * * *

Group XX — Insurance Companies
"Pan-American Life Insurance Co.

* * * *

"SECOND: Therefore, the Cuban state is declared subrogated in place and grade of the natural and juridicial persons referred to in the preceding section with respect to the properties, rights and rights of action mentioned, as well as the assets and liabilities constituting the capital of the concerns referred to.

"THIRD: It is declared that these forced ex-

propriations are effected for reasons of necessity and public use and national interest mentioned in the Whereas clauses of this Resolution."

FINAL JUDGMENT dated June 6, 1962 (Record 276)

(Caption omitted)

This action is at law by the surviving widow of the deceased insured. Plaintiff is named beneficiary in the policy in question. This case was duly tried before the court without a jury, there being no demand for jury trial.

The policy was issued in 1943 in New Orleans, Louisiana, but was delivered to the insured in Havana, Cuba, where he then lived and later died a Cuban national in 1960. There is no dispute that premiums have been duly paid. The issue arises by virtue of defendant's denial of liability on the grounds that the Cuban monitary decree of 1951 in pursuance of Cuban Law #13 of 1948, required all contracts theretofore payable in dollars to or by Cuban nationals in Cuba to be paid in Cuban pesos instead. Defendant contends that this modified the terms of the policy which provided for payment in United States dollars in New Orleans. Defendant additionally alleged that thereafter the insured agreed with the defendant that the terms of the policy be modified accordingly and submitted evidence that payments thereafter were in fact paid in pesos instead of dollars, thus adopting or ratifying the method of payment in pesos.

Defendant's third position is that the confiscation

of defendant's insurance business in Cuba by Cuban Resolution #3 avoids any liability under this contract and that a post-Castro law #568 in 1959 prohibited the payment of any monies to Cuban nationals anywhere except in Cuba.

The court has rejected these same contentions, save that regarding the alleged action of the parties in subsequent dealings in pesos for payments under this policy, in this court's opinion of even date in **Raij v Pan American Life Insurance Company**, Circuit Court of Dade County, in Chancery, 61C 7089.

The Court finds in this cause that on the issue of the asserted change of the provision of the policy regarding payment in dollars, that the insured by his actions in both paying premiums and receiving benefits in pesos, thereby accepted the modification for such payment under Cuban law for the purposes of his insurance contract, and that the terms of the policy for payment in dollars was effectively modified and the insured, and now his beneficiary, this plaintiff, is bound thereby but is entitled to recover benefits hereunder in Cuban pesos or the equivalent thereof in United States dollars at the present United States exchange rate, based upon the face amount of the policy, interest and other benefits provided in the policy and accordingly.

IT IS ORDERED that plaintiff do have and recover of and from the defendant said sums upon application and calculation of the amount involved as above provided.

IT IS FURTHER ORDERED that plaintiff do have and recover of and from defendant the further sum of

$1,500.00 in United States Dollars hereby fixed and awarded as a reasonable attorney's fee for services herein of plaintiff's attorneys.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 6th day of June, 1962.

/s/ HAL P. DEKLE
CIRCUIT JUDGE

cc: Ray A. Munson, Esq.

Dixon, DeJarnette, Bradford,
Williams, McKay & Kimbrell, Esqs.

DEFENDANT'S MOTION FOR NEW TRIAL

(Record 117)
(Caption omitted)

COMES NOW the defendant in the above styled cause and moves the court to set aside the judgment, findings of fact and conclusions of law; for a judgment in favor of said defendant notwithstanding the court's findings and judgment entered in this cause without a jury trial, and if these motions are denied, the defendant moves the Court for an order granting a new trial in this cause on the following grounds, separately and severally, to-wit:

(1) The verdict, judgment, findings of fact and conclusions of law are contrary to the evidence.

(2) The verdict, judgment, findings of fact and conclusions of law are contrary to the manifest weight of the evidence.

(3) The court erred in failing and refusing to give effect in this cause to Cuban Law No. 13 of 1948.

(4) The court erred in failing and refusing to give effect in this cause to Cuban Law No 568, of September 29, 1959.

(5) The court erred in failing and refusing to give effect in this cause to Cuban Resolution No. 3, of October 24, 1960, substituting the Cuban State as the obligor on policies of insurance issued by defendant in Cuba.

(6) The court erred in failing and refusing to give effect to Article VIII, sec. 2(b) of the Bretton Woods Monetary Agreement of 1945, to its adoption as the law of the United States of America by Congressional enactment, in 22 U. S. C. A. section 286 eq seq., and particularly sec. 286 H.

(7) The court erred in failing and refusing to follow the public policy of the United States of America extending diplomatic recognition to the revolutionary (Castro) government of Cuba, thereby recognizing it as a sovereign power, with powers over its currency, foreign exchange and the rights and duties of its na-

tionals equal to those of the United States of America.

DATED this 12th day of June, 1962.

DIXON, DeJARNETTE, BRADFORD, WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Building,
Miami 32, Florida,

By: s JAMES A. DIXON
Attorneys for Defendant.

I CERTIFY that on this 12th day of June, 1962, a true copy of the foregoing Motion to Set Aside Judgment, Findings of Fact and Conclusions of Law; Motion for New Trial, and Motion for Judgment Nothwithstanding Court's Findings and Judgment was mailed to RAY A. MUNSON, Ingraham Building, Miami, Florida.

s JAMES A. DIXON

AMENDED FINAL JUDGMENT, dated September 24, 1962 (Record 278)

This action is at law by the surviving widow of the deceased insured. Plaintiff is named beneficiary in the policy in question. This case was duly tried before the court without a jury, there being no demand for jury trial.

The policy was issued in 1943 in New Orleans, Louisiana, but was delivered to the insured in Havana, Cuba, where he then lived and later died a Cuban na-

tional in 1960. There is no dispute that premiums have been duly paid. The issue arises by virtue of defendant's denial of liability on the grounds that the Cuban monitary decree of 1951 in pursuance of Cuban Law #13 of 1948, required all contracts theretofore payable in dollars to or by Cuban nationals in Cuba to be paid in Cuban pesos instead. Defendant contends that this modified the terms of the policy which provided for payment in United States dollars in New Orleans. Defendant additionally alleged that thereafter the insured agreed with the defendant that the terms of the policy be modified accordingly and submitted evidence that payments thereafter were in fact paid in pesos instead of dollars, thus adopting or ratifying the method of payment in pesos.

Defendant's third position is that the confiscation of defendant's insurance business in Cuba by Cuban Resolution #3 avoids any liability under this contract and that a post-Castro law #568 in 1959 prohibited the payment of any monies to Cuban nationals anywhere except in Cuba.

The court has rejected these same contentions, save that regarding the alleged action of the parties in subsequent dealings in pesos for payments under this policy, in the court's opinion of even date in **Raij v Pan American Life Insurance Company**, Circuit Court of Dade County, in Chancery, 61C 7089.

The court finds in this cause that on the issue of the asserted change of the provision of the policy regarding payment in dollars, that the insured by his actions in both paying premiums and receiving benefits in pesos, thereby accepted the modification for such payment un-

der Cuban law for the purposes of his insurance contract, and that the terms of the policy for payment in dollars was effectively modified and the insured, and now his beneficiary, this plaintiff, is bound thereby but is entitled to recover benefits hereunder in Cuban pesos or the equivalent thereof in United States dollars at the rate of exchange of Cuban pesos for United States Dollars prevailing in Miami, Florida, on November 28, 1960, based upon the face amount of the policy, interest and other benefits provided in the policy.

The court finds and determines that the proper conversion date, aforesaid is November 28, 1960, that being the date of a letter from the defendant to the attorneys for the plaintiff denying liability for the claim asserted against the defendant by the plaintiff.

The court thereupon heard testimony of witnesses for the respective parties as to the said rate of exchange prevailing on said date, and based upon such testimony the court finds and determines that said exchange rate on said date was that one Cuban peso was worth $.245 United States dollars.

The court thereupon by separate order and judgment, entered judgment in favor of the plaintiff and against the defendant, which said separate order and judgment are hereby incorporated herein as fully as though set out herein in words and figures.

The court further heard argument of counsel for the respective parties on the defendant's motions to set aside judgment, findings of fact and conclusions of law, motion for new trial and motions for judgment notwith-

standing court's findings and judgment, and on consideration therefore, it is

ORDERED and ADJUDGED that the said motions be and they are hereby denied.

DONE and ORDERED in Chambers at Miami, Dade County, Florida, this 24th day of September, 1962.

s HAL P. DEKLE
CIRCUIT JUDGE.

FINAL MONEY JUDGMENT

dated September 24, 1962 (Record 281)

(Caption omitted)

THIS CAUSE came on to be heard on Plaintiff's Motion to Tax Costs and for the Entry of a Final Money Judgment pursuant to the Final Judgment of this Court entered on the 6th day of June, 1962, and the Court having heard argument of counsel and being otherwise fully advised in the premises, it is, upon consideration thereof,

ORDERED and ADJUDGED that the Plaintiff, MARIE LORIDO do have and recover of and from the Defendant, PAN AMERICAN LIFE INSURANCE COMPANY, a New Orleans corporation, the sum of One Thousand Nine Hundred Thirty-Nine & 64/100 Dollars ($1939.64) together with the further sum of Fifteen Hundred Dollars ($1,500) as attorney's fee and her costs expended in the prosecution of this action which are hereby taxed in the amount of Three Hundred Five & 07/100

Dollars ($305.07), for all of which sums let execution issue immediately.

DONE and ORDERED in Chambers in Miami, Dade County, Florida, this 24 day of Sept., 1962.

/s HAL P. DEKLE
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 1962, a true copy of the foregoing Appendix to Appellant's Brief was mailed to RAY A. MUNSON, 340 Ingraham Building, Miami 32, Florida.

JAMES A. DIXON, JR.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT JANUARY TERM, A. D. 1963

CASE NO. 62-624

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

vs.

MARIE LORIDO,
Appellee.

Opinion filed May 14, 1963.

An Appeal from the Circuit Court for Dade County, Hal P. Dekle, Judge.

Dixon, DeJarnette, Bradford, Williams, McKay & Kimbrell, for appellant.

Ray A. Munson, for appellee

Before PEARSON, C.J., and HORTON and HENDRY, JJ.

PER CURIAM.

Affirmed on the authority of Pan American Life Insurance Co. v. Recio, Fla.App.1963, So.2d . [Case No. 62-452, opinion filed May 7, 1963, not yet reported]

A True Copy
ATTEST:
WILLIAM P. CARTER
Clerk District Court Of Appeal
of Florida, Third District
By EVELYN A. HILLMAN
Deputy Clerk

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

CASE NO. 62-624

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

vs.

MARIE LORIDO,
Appellee.

PETITION FOR REHEARING

Comes now PAN-AMERICAN LIFE INSURANCE COMPANY, Appellant herein, and moves this Honorable Court to grant a rehearing of this cause, and for grounds thereof shows:

1. The opinion in this case affirms the judgment of the lower court on the authority of the opinion of this court in the case of PAN-AMERICAN LIFE INSURANCE COMPANY v. RECIO (Case No. 62-452).

2. Your petitioner has filed a petition for rehearing in the last mentioned case, a true copy of which is attached hereto and made a part hereof, and your petitioner adopts the statements therein contained as the grounds of this petition.

3. The opinion of this court in the RECIO case did

not refer to or otherwise pass upon the defense asserted by your petitioner in that case based upon Cuban Law No. 568, the Bretton Woods Agreement relating to the International Monetary Fund, and the Federal legislation pertaining thereto (22 U. S. C. A. 286 et seq.). Your petitioner assumes that this was due to the fact that this court had previously stricken from your petitioner's brief in the RECIO case the section relating to this defense. No such action was taken in the present case and the sufficiency of this defense was argued both in the briefs and in oral argument. An express ruling by this court upon such an important matter as a Federal executive agreement approved by both Houses of the Congress and legislated in part into the law of the United States (22 U. S. C. A. 286 h) would be of great assistance to other courts which will be called upon to pass on this matter in other cases. The legal questions presented by this defense are of such importance that they should not be disposed of **sub silentio.**

Respectfully submitted,

DIXON, DeJARNETTE, BRADFORD, WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Building,
Miami 32, Florida.

By: JAMES A. DIXON
Attorneys for Appellant.

CERTIFICATE OF SERVICE

I CERTIFY that on this 16th day of May, 1963, a true copy of the foregoing Petition for Rehearing was mailed to MR. RAY A. MUNSON, 340 Ingraham Building, Miami 32, Florida, the attorney of record for the plaintiff in the foregoing cause.

JAMES A. DIXON

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

CASE NO. 62-452

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

vs.

AGUSTIN GOYTISOLO RECIO,
Appellee.

PETITION FOR REHEARING

Comes now PAN-AMERICAN LIFE INSURANCE COMPANY, Appellant herein, and petitions this Honorable Court to grant a rehearing in this cause, and as grounds for this petition shows:

1. The opinion in this case was filed May 7, 1963. A few days later on May 14, 1963, this Court filed an opinion in Case No. 61-827, styled NATIONAL INSTITUTE OF AGRARIAN REFORM v. TERRY KANE, et al.

2. Your petitioner respectfully suggests that these two opinions are inconsistent with each other, as will hereafter be pointed out.

(a) The confiscation complained of in the Kane case was effected under Resolution No. 3, of October 24, 1960, of the Republic of Cuba. If the Court will refer to the text of

this resolution attached to the Answer of your petitioner in the Circuit Court, the Court will see that AGENCIO de TRACTORES y EQUIPOS, of which the Kanes were stockholders, is listed as one of the concerns expropriated by section 1 of that resolution. Its name appears in Group XXI in that section. This is the same resolution which expropriated your petitioner, whose name appears in Group XX of this same section.

(b) In section 2 of this resolution, it is provided that the Cuban State is substituted as the obligor on the liabilities of the expropriated concerns. See also the affidavit of the Cuban lawyer, DR. MENDIGUTIA.

(c) In the Kane case, the opinion recognizes that the expropriation effected by the first section of the resolution was an "act of state" on which the courts of this country will not sit in judgment.

(d) In this case, the court apparently says that the substitution of obligors effected by the second section of the resolution was not an "act of state" and refused to recognize its effectiveness upon the rights of Cuban nationals. Your petitioner is thereby deprived of a defense accruing to it under Cuban law.

(e) The application of the "act of state" doctrine in the Kane case frees an agency of the Republic of Cuba from liability to an American citizen. The refusal to apply that doctrine in this case imposes a liability on an American company from which the law of the plaintiff's sovereign has relieved it.

3. This Court has apparently in this case relied heavily upon the case of BANCO NACIONAL de CUBA v. SABBATINO, 307 F. 2d 845, notwithstanding the fact that in that case certiorari has been granted by the U. S. Supreme Court, although this fact is adverted to in the Kane opinion. The opinion in this case also relies upon the case of RODRIGUEZ v. PAN-AMERICAN, 311 F. 2d 429, which is now pending in the U. S. Supreme Court on petition for certiorari. The Court in this case has apparently overlooked the fact that neither of these cases is final.

4. The opinion in this case states that your petitioner relies "most heavily" upon the case of DOUGHERTY v. EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, 266 N. Y. 71, 193 N. E. 897, which the opinion then proceeds to distinguish on its particular facts. The Court has apparently overlooked the fact that your petitioner relies even more heavily upon cases such as BERNSTEIN v. VAN HEYGHEN FRERES, 163 F. 2d 246, and PONS v. REPUBLIC OF CUBA, 294 F. 2d 925, (cert. denied in both) which are recognized as controlling authority in the Kane opinion. Your petitioner also relies heavily upon the decision in TILLMAN v. NATIONAL CITY BANK, 118 F. 2d 631 (cert. denied 314 U. S. 1009, 62 S. Ct. 96, 86 L. Ed. 521) in

its holding that a recognized foreign sovereign has the power to force an "involuntary novation" upon its nationals.

5. Since the opinion in this case does not discuss or even cite the case of PAN-AMERICAN LIFE INS. CO. v. BLANCO, 311 F. 2d 424, your petitioner can only assume that the Court has overlooked it.

6. The opinion in this case says that your petitioner asks that this Court "enforce the expropriation decrees entered by the present government of Cuba." This portion of the opinion does not fairly state the position of your petitioner. That position is that Resolution No. 3 not only expropriated the Cuban assets of your petitioner but also, and most important, substituted the Cuban State as the obligor upon prior liabilities. Recognition of this fact is a far cry from "enforcing expropriation decrees". This resolution is used as a shield by your petitioner, not as a sword. In the Kane case, the opinion permitted it to be used as a shield by the NATIONAL INSTITUTE OF AGRARIAN REFORM. In the SABBATINO case, the National Bank of Cuba was using the resolution as a sword, asking affirmative relief based upon it. We believe that the Court in this case has overlooked this distinction.

Respectfully submitted,

DIXON, DeJARNETTE, BRADFORD, WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Building,
Miami 32, Florida.

By: JAMES A. DIXON
Attorneys for Appellant.

CERTIFICATE OF SERVICE.

I CERTIFY that on this 15th day of May, 1963, a true copy of the foregoing Petition for Rehearing was mailed to CAREY, GOODMAN, TERRY, DWYER & AUSTIN, 650 Seybold Building, Miami 32, Florida, the attorneys of record for the Appellee herein.

JAMES A. DIXON

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT JANUARY TERM, A.D. 1963
WEDNESDAY, MAY 29, 1963

CASE NO. 62-624

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

vs.

MARIE LORIDO,
Appellee.

Counsel for appellant having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:

WILLIAM P. CARTER
Clerk District Court of
Appeal, Third District
By EVELYN A. HILLMAN
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

vs.

MARIE LORIDO,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT.

RAY A. MUNSON,
340 Ingraham Building,
Miami 32, Florida,

Attorney for Respondent.

JAMES A. DIXON and
DAVID S. STERN,
DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Building,
101 East Flagler Street,
Miami 32, Florida

Attorneys for Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT

TO THE SUPREME COURT OF THE STATE OF FLORIDA:

Petitioner, PAN-AMERICAN LIFE INSURANCE COMPANY, presents this, its petition for a Writ of Certiorari and states:

1. Petitioner seeks to have reviewed a decision of the District Court of Appeal, Third District, dated May 14, 1963, and filed in the records of said District Court on the 14th day of May, 1963, in Minute Book 6, Page 235, and an order dated May 29th, 1963, and filed in the records of said District Court on the 29th day of May, 1963, in Minute Book 6, Page 263.

2. This petition is presented under and pursuant to Article 5, Section 4, of the Florida Constitution and Rule 4.5c of the Florida Appellate Rules.

3. This petition is accompanied by a certified copy of the decision of the said Court in the case of PAN-AMERICAN LIFE INSURANCE COMPANY v. RECIO, Fla. App. 1963, No. 62-452, opinion filed May 7, 1963, not yet reported, on the authority of which the said court in this case affirmed the lower court per curiam.

4. The following are the facts of this case:

(a) The respondent, MARIE LORIDO, is the widow of a deceased Cuban national to whom PAN-AMERICAN LIFE INSURANCE COMPANY issued a

policy of insurance in Cuba in 1943. The respondent is herself a national of Cuba.

(b) The application for the policy in question was made in Spanish and in Havana. The policy, which was in Spanish, was prepared in the home office in New Orleans, was mailed to the company's general agent in Havana. It was countersigned and taken by the general agent before a Cuban notary in Havana, and the general agent authenticated the signatures of the company's officers by notarial act. The policy was then delivered in Cuba to the insured and the first premium paid in Havana.

(c) The policy was originally payable in U. S. dollars. Judge Dekle, in the Circuit Court, ruled that, due to certain facts proved during the trial, it had been converted, by the agreement of the company and the insured, into a peso policy.

(d) The insured died in the early part of October, 1960, but no proof of death was submitted to the company until during the trial, at which time a death certificate was produced by the plaintiff and introduced into evidence. This suit was brought by the beneficiary to recover the death benefits.

(e) The company based its defense principally upon certain Cuban laws. These are as follows:

(1) The monetary law No. 13 of 1948, and an implementing Resolution No. 1384. The law created the National Bank of Cuba and provided that after a date

to be fixed by resolution the Cuban peso would be the only legal tender. Resolution No. 1384 fixed this date as July 1, 1951. Prior to that time both the Cuban peso and the U. S. dollar had been legal tender. However, Judge Dekle's ruling, that, by agreement, the policy had been converted to a peso policy, made this law immaterial. However, his ruling to this effect was not made for some time after the Spanish text (and English translation) of this law and resolution had been admitted into evidence.

(2) Law No. 568, of September 29, 1959. This is the Monetary Contraband Law which makes it illegal to pay money to a Cuban national (or to receive money from a Cuban national) anywhere except in Cuba or in any currency except Cuban pesos, or even to make credit available to a Cuban national except in Cuba and in Cuban currency. It was contended in the lower court (and is here) that this law destroyed the right of Cuban nationals, such as the plaintiff, to sue in the courts of this country on a claim for a dollar recovery. It was also contended in the lower court (and is here) that this is the type of currency control law contemplated by Art. VIII (2)(b) of the Bretton Woods Agreement, which by Con-

gressional enactment (22 U. S. C. A. 286 et seq.) has become a part of the law of the United States, which the courts, State and Federal, are required to enforce.

(3) Law No. 851 of June, 1960. This provided for the issuance of resolutions of intervention and expropriation. By Resolution No. 3 of October 24, 1960, promulgated in pursuance of this law, the Cuban assets of the appellant forcibly expropriated, and the Cuban state was substituted as the obligor on the Appellant's outstanding Cuban policies of insurance. It was contended in the lower court (and is here) that this took away from the plaintiff the right of the plaintiff to look to the appellant for performance and confined her to her rights under the policy against the Republic of Cuba.

(f) At the trial the petitioner introduced into the record the testimony of Sr. J. V. Bird, appellant's general agent in Cuba, showing the forcible expropriation of the appellant's Cuban assets.

(g) The petitioner also presented the testimony of two prominent Cuban lawyers, Dr. Francisco Figueroa and Dr. Eduardo Le Riverend. These gentlemen testified as to the existence of the Cuban laws and resolutions above referred to and as to their legal effect under Cuban law upon the rights of the plaintiff. Their testimony

completely upheld the petitioner's position, and was uncontradicted.

(h) On June 6, 1962, Judge Dekle entered what is styled a final judgment, but it reserved a ruling, in effect, upon the equivalent in Cuban pesos of the face amount of the policy. The appellant filed a motion for a new trial and at a subsequent hearing, at which testimony was taken, Judge Dekle fixed the conversion value of the Cuban peso at $.24 ½ in U. S. currency and entered what is styled as amended final judgment, denied the appellant's motion for a new trial and entered a money judgment in favor of the plaintiff.

(i) The District Court of Appeal affirmed per curiam.

5. On the foregoing facts the Court was presented with the following points of law:

> WHEN A RECOGNIZED FOREIGN SOVEREIGN ENACTS A LAW EXPROPRIATING THE ASSETS IN THE SOVEREIGN'S TERRITORY BELONGING TO AN AMERICAN INSURANCE COMPANY AND ASSUMES THE LIABILITIES OF SUCH INSURANCE COMPANY TO ITS NATIONALS, MAY A NATIONAL OF THAT SOVEREIGN SUE IN THE COURTS OF THIS COUNTRY TO COMPEL THE INSURANCE COMPANY TO PAY POLICY BENEFITS ON CONTRACTS MADE IN THE TERRITORY OF THE FOREIGN SOVEREIGN?

On this point of law the District Court of Appeal,

Third District, held, by its reliance upon its own opinion in the **RECIO** case above-cited that the "act of State" doctrine did not apply to the expropriation of petitioner and the substitution of the Republic of Cuba as the obligor on the policies of insurance theretofore issued by the petitioner in Cuba.

6. The same point of law was involved in the case of NATIONAL INSTITUTE OF AGRARIAN REFORM v. TERRY KANE, et al., decided by the District Court of Appeal, Third District, on May 14, 1963, Case No. 61-827, not yet reported. A certified copy of that opinion is attached to this petition as Exhibit 1. The facts involved in that case were as follows:

(a) A Cuban corporation AGENCIO de TRACTORES y EQUIPAS, S. A., in which the controlling stockholders were American citizens, was expropriated by Resolution No. 3, of October 24, 1960, the same decree by which the petitioner was expropriated.

(b) These American citizens sued the NATIONAL INSTITUTE OF AGRARIAN REFORM, an arm of the government of the Republic of Cuba for the value of the expropriated property, and were able to obtain personal jurisdiction thereof.

(c) The lower court entered judgment against the defendant, who took an appeal.

On these facts the District Court of Appeal, Third District, ruled that the "act of State" doctrine "did apply and that the Court could not declare the invalidity of

the Cuban decree" as a basis for creating a right of recovery in the plaintiff in this cause.

7. The decision of the District Court of Appeal which the petitioner seeks to have reviewed is in direct conflict with the decision in the **KANE** case. Because of the reasons and authorities set forth in petitioner's brief, it is believed that the decision hereby sought to be reviewed is erroneous, and that the conflicting decision in the **KANE** case is correct and should be approved by this Court as the controlling law for the State of Florida.

8. (a) The petitioner would further show that the decision here sought to be reviewed also involved a further question of law which may be stated as follows:

> WHEN A RECOGNIZED FOREIGN SOVEREIGN ENACTS A LAW WHICH PROHIBITS PAYMENTS TO OR BY ITS NATIONALS ANYWHERE EXCEPT IN THE SOVEREIGN'S TERRITORY AND IN THE SOVEREIGN'S CURRENCY, MAY A CITIZEN AND NATIONAL OF THAT SOVEREIGN MAINTAIN AN ACTION IN THE COURTS OF THIS COUNTRY TO COMPEL PAYMENT OF A DEBT IN THIS COUNTRY AND IN THE CURRENCY OF THIS COUNTRY?

(b). This question is raised by Cuban Law No. 568, referred to above, and the effect required to be given it by the Bretton Woods Agreement, which provided for the creation of the International Monetary Fund, and the Federal Statutes implementing it and enacting two

portions of the Agreement into the positive law of the United States. See 22 U. S. C. A. 286, particularly 286 h.

(c) The District Court of Appeal, Third District, made no mention of this question in its per curiam opinion in this case, and it was likewise passed over in the opinion in the **RECIO** case, on the authority of which this case was affirmed.

(d) The petitioner assigned error on this question and it was argued orally and in the briefs. Petitioner likewise called the attention of the court to this question in its petition for rehearing. Despite this, neither this opinion nor the opinion in the **RECIO** case made mention of the matter.

(e) The petitioner can only assume that the District Court of Appeal, sub silentio, held the Bretton Woods Agreement to be invalid though approved by both Houses of Congress, and also held invalid the Federal Statute above cited.

WHEREFORE, the petitioner requests this Court:

(a) To grant a Writ of Certiorari and enter its order quashing the decision and order hereby sought to be reviewed, approving the decision in the **KANE** case as the correct decision;

(b) If this court shall be of the opinion that the question mentioned in paragraph 8 hereof is one as to which an appeal only lies, that this petition be deemed to be treated as an appeal from the decision of the District Court of Appeal, as one initially passing upon the validity

of a Federal statute and treaty, as provided in Art. V, Sec. 4(2) of the Constitution of the State of Florida.

Respectfully submitted,

DIXON, DeJARNETTE, BRADFORD, WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Bldg.,
101 East Flagler Street,
Miami 32, Florida.

By: JAMES A. DIXON
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Petition was served by mail on RAY A. MUNSON, attorney of record for the respondent, on the 11th day of June, 1963. I further certify that a copy of this Petition was today filed in the office of the clerk of the District Court of Appeal, Third District.

DATED this 12th day of June, 1963.

DIXON, DeJARNETTE, BRADFORD, WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Bldg.,
101 East Flagler Street,
Miami 32, Florida.

By: JAMES A. DIXON
Attorneys for Petitioner

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1963
TUESDAY, JULY 16, 1963

CASE NO. 32,795

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

vs.

MARIE LORIDO,
Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the District Court of Appeal of Florida, Third District, in said cause bearing date May 14, 1963, and the record having been inspected, it is ordered that said Petition be and the same is hereby denied.

A True Copy

TEST:

GUYTE P. McCORD
Clerk Supreme Court.

CLERK CERTIFICATE

I, William P. Carter, Clerk of the District Court of Appeal, Third District, do hereby certify as follows:

1. The foregoing pages numbered 1 to are true and correct copies of the following documents in my custody and control as clerk of the said court, to wit:

(a) The appendix to the brief of the appellant, Pan-American Life Insurance Company, in the above captioned cause.

(b) The order and decision of this court affirming the judgment of the court from which appeal was taken to this court.

(c) The petition for rehearing filed in this court by the appellant.

(d) The order of this court denying said petition for re-hearing.

(e) The petition for a writ of certiorari from the Supreme Court of Florida to this court in this cause.

(f) The order of the Supreme Court of Florida denying said petition for certiorari.

2. The appellee herein, Marie Lorido, did not file an appendix to her brief in this court.

3. The petition for a writ of certiorari mentioned in (c) above was filed within the time allowed by law and the Florida Appellate Rules and a copy thereof was filed in my office as required or permitted thereby.

4. The Supreme Court of Florida did not render any opinion in connection with its order denying the said petition for a writ of certiorari.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of this court at Miami, Dade County, Florida, this day of , 1963.

William P. CARTER, Clerk,
District Court of Appeal,
Third District

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JOHN F. DAVIS, CLERK

IN THE

DISTRICT COURT OF APPEAL

THIRD DISTRICT

PAN-AMERICAN LIFE INSURANCE COMPANY,

Appellant,

vs.

MARIE LORIDO,

Appellee,

PARTIAL TRANSCRIPT OF RECORD

William P. Carter,
Clerk.

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IN THE

DISTRICT COURT OF APPEAL

THIRD DISTRICT

PAN-AMERICAN LIFE INSURANCE COMPANY,

Appellant,

vs.

MARIE LORIDO,

Appellee,

PARTIAL TRANSCRIPT OF RECORD

APPENDIX TO APPELLANT'S BRIEF

APPENDIX

AMENDED COMPLAINT (Record 1)

(Caption and exhibits omitted)

The plaintiff, MARIE LORIDO, by her undersigned attorneys, sues the defendant, PAN-AMERICAN LIFE INSURANCE COMPANY, and says:

1. That the Defendant is a corporation, organized and existing under the laws of the State of Louisiana, and doing business in the State of Florida.

2. That plaintiff, MARIE LORIDO, is the wife of

JOSE LORIDO LOMBARDERO, now deceased, and the beneficiary named in Policy No. 381-315 on the life of the said JOSE LORIDO LOMBARDERO.

3. That on November 22, 1943, at Havana, Republic of Cuba, in consideration of the payment of the premium of $466.25 annually during the term of 25 years, the Defendant, by its agents duly authorized thereto, executed its policy of insurance No. 381-315 in writing to JOSE LORIDO LOMBARDERO on his life in the sum of $5,000.00, a copy of which policy has been annexed to the original Complaint herein and marked Exhibit "A" and which by reference is made a part of this Amended Complaint and an English translation of the said policy is annexed hereto and marked Plaintiff's Exhibit "B".

4. That as a further provision of the said policy of insurance, an appendix thereto called for the establishment of a fund amongst a certain class of insureds of the Defendant, to be distributed at the end of ten years, at which time the accumulation of the fund would be divided amongst the surviving members of the said class of insureds.

5. That as a further provision of the said policy of insurance an appendix thereto called for the establishment of a fund amongst a certain class of insured of the Defendant to be distributed at the end of fifteen years, at which time the accumulation of the fund would be divided amongst the surviving members of the said class of insureds.

6. That the said contract of insurance further contained a series of 20 coupons attached thereto which, un-

der the provisions of the policy might be used to reduce the annual premiums or be left with the company to accumulate with compound interest at the rate of 3-½% per annum.

7. That on October 6, 1960, in Havana, Cuba, the insured, JOSE LORIDO LOMBARDERO, died.

8. That up to the time of the death of the insured, all premiums accrued upon said policy were fully paid.

9. That the insured, JOSE LORIDO LOMBARDERO, and Plaintiff, each performed all the conditions of said insurance on their part to be performed and the Plaintiff, prior to the commencement of this action, gave notice to the Defendant of the death of the said JOSE LORIDO LOMBARDERO, and demanded payment of the principal sum of $5,000.00, the face value of the policy, and the further sums due under the above terms and provisions of the said policy.

10. That the sums have not been paid nor any part thereof and that the insurer has further refused to furnish the beneficiary with forms for proof of death as required by the terms of the policy.

11. That there is now due and payble to the Plaintiff from the Defendant the face value of the policy of $5,000.00 plus interest; plus $2,142.00 together with interest on said sum compounded annually at the rate of 3-½% from the date of the execution of the policy on the coupon privileges of the said contract of insurance and in addition there is a sum due and owing to the Plaintiff from the Defendant, as proceeds of the aforementioned

funds as set forth in Paragraphs 4 and 5, which amounts are unknown to the Plaintiff and for which the Plaintiff demands accounting from the said Defendant.

WHEREFORE, Plaintiff sues the Defendant and demands the following:

1. Damages in the amount of $5,000.00 plus interest, and

2. The further amount of $2,142.00 with interest thereon compounded annually at the rate of 3-½% from the date of execution of the policy; and

3. The sums due and owing under the aforementioned special funds together with interest thereon; and

4. Reasonable attorneys fees for the prosecution and collection of the loss under said policy of insurance as provided by §627.0127 F. S. 1959; and

5. Costs of this action, and

6. An accounting of the insurer of the sums due under the aforesaid special funds.

STUART, MUNSON & FRIED
Attorneys for Plaintiff
340 Ingraham Building
Miami 32, Florida

/s/ RAY A. MUNSON

BY_____

WE HEREBY CERTIFY that a true copy of the foregoing Amended Complaint was mailed to MESSRS. DIXON, DeJARNETTE, BRADFORD, WILLIAMS, McKAY & KIMBRELL, Dade Federal Building, Miami, Florida, Attorneys for Defendant, this 5th day of April, A. D. 1961.

STUART, MUNSON & FRIED
BY /s/ RAY A. MUNSON

ANSWER OF DEFENDANT, with part of one exhibit. (Record 24)

Comes now the defendant, PAN-AMERICAN LIFE INSURANCE COMPANY, and for answer to the amended complaint filed herein says:

1. The amended complaint fails to state a cause of action against the defendant or a claim upon which relief can be granted.

2. The defendant admits the allegations of paragraphs 1, 2 and 3 of the amended complaint, except that it denies that Exhibit "B" is a correct translation of Exhibit "A".

3. For answer to paragraphs 4 and 5 of the amended complaint, defendant admits the same insofar as they are consistent with Exhibit "A", but says that the insured has been paid all sums due him under the sections of Exhibit "A" applicable thereto, and that no sums are due and payable under the applicable provisions of said policy.

4. The defendant admits the allegations of para-

graph 6 of the amended complaint, subject to the affirmative allegations hereinafter contained in this answer.

5. For answer to paragraph 7 of the amended complaint, the defendant says that it has not been furnished with any proof of the fact or date of death of the insured, except that it has been informed verbally by its former agent in Havana, Cuba, that he knows the insured died after September 29, 1959, and prior to the institution of this suit.

6. For answer to paragraph 8 of the amended complaint, the defendant admits the same.

7. Subject to the allegations of paragraph 5 of this answer and to the affirmative allegations hereinafter contained in this answer, the defendant admits the allegations of paragraph 9 of the amended complaint.

8. For answer to paragraph 10 of the amended complaint, the defendant admits the same, but says that because of the facts hereinafter alleged it has referred the plaintiff to the administrator hereinafter mentioned for the purpose of obtaining the forms mentioned.

9. For answer to paragraph 11 of the amended complaint, the defendant denies the same.

10. Further answering the amended complaint, the defendant says:

(a) That prior to the effective date of Law No. 13 of 1948 of the Republic of Cuba, both the Cuban peso and the United States dollar were legal tender in

Cuba, but that subsequently, as the defendant is informed and believes, the Republic of Cuba, by the Monetary Decree of 1951, promulgated in pursuance of said Law No. 13, required all contracts theretofore payable in Dollars to or by Cuban Nationals in Cuba to be payable in Cuban pesos.

(b) The insured, on or about August 15, 1952, agreed with the defendant that the policy described in the amended complaint should be modified so that obligations payable thereunder by either party should thereafter be payable only in Cuban pesos.

(c) The defendant has been admitted to do a life insurance business in Cuba since 1913, and in pursuance of Cuban laws encouraging concerns situated as the defendant was to invest their assets in Cuba, as far back as the 1930s, the defendant had invested in Cuban properties and securities all of its reserves, and more, against business written or liabilities incurred in Cuba, so that, at the times hereinafter alleged, the properties owned by the defendant in Cuba far exceeded its liabilities in Cuba.

(d) On or about September 29, 1959, after the Castro government came into power in Cuba, Law No. 568 was promulgated by the Cuban government, which, in substance and effect, prohibited the defendant from paying any moneys to Cuban Nationals anywhere except in Cuba, or even making any entries in its books of account which would result in credits being made available to Cuban Nationals except in Cuba.

(e) On or about October 24, 1960, the Cuban

government promulgated Resolution No. 3, a true and correct translation into English whereof is attached hereto as Exhibit No. 1, which in substance and effect provided for the forcible expropriation of the Cuban business of the defendant, vested title to all of defendant's Cuban assets in the Cuban government, and substituted the Cuban government as the obligor on all of defendant's Cuban liabilities and contracts, among which is the policy of insurance herein sued on.

(f) The contract herein sued on is a Cuban contract, the application therefor was taken in Cuba, delivery thereof was made in Cuba to a Cuban National, after notarization thereof in Cuba in accordance with Cuban law, the place of performance, thereof, both as to payment of premiums and as to payment of benefits thereunder is in Cuba, and the assets reserved by the defendant for the payment by the defendant of its liabilities thereunder were physically located in Cuba and seized by the Cuban government.

(g) After the expropriation effected by Resolution No. 3, above mentioned, the Cuban government, through the administrator therein referred to, has collected premiums on policies issued by the defendant before the date of expropriation, has collected agents' balances due on defendant's Cuban business and has sought to collect policy loans outstanding on policies issued by defendant prior to such expropriation (though with what success defendant does not know) and has not remitted to the defendant the proceeds of such collections.

(h) The Cuban government, through the administrator therein referred to, has paid claims accruing

on policies issued by defendant prior to such expropriation, has issued further policies in defendant's name, and has in all things substituted itself in the place and stead of the defendant on both past, present and future transactions with its own Nationals.

(i) By reason of the facts aforesaid, the defendant has been relieved of its obligations to Cuban Nationals on policies issued as aforesaid.

11. Further answering the amended complaint, the defendant says that the plaintiff is an alien and entitled to use the courts of the State of Florida only as a matter of comity, that the Cuban courts are no longer open to United States citizens seeking to enforce their contracts there against residents of Cuba, and that by reason of this lack of comity on the part of Cuba, a reciprocal comity will not permit the use of the courts of this state by the plaintiff.

12. Further answering the amended complaint, the defendant says that the purpose and effect of the transactions mentioned in the amended complaint have been frustrated and the defendant thereby released from liability therefor.

DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Bldg.,
Miami 32, Florida,

By: /s/ JAMES A. DIXON
Attorneys for Defendant.

I CERTIFY that on this 25th day of April, 1961, a true copy of the foregoing Answer was mailed to STUART, MUNSON & FRIED, attorneys for the plaintiff herein, 340 Ingraham Building, Miami 32, Florida.

/s/ JAMES A. DIXON

PORTIONS OF RESOLUTION NO. 3

"RESOLUTION NO. 3

"WHEREAS, The Imperialist interests whose representatives control the Government of the United States of North America, in their intention to utilize every means which they consider effective to impede the consolidation of the Cuban Revolution, have continued committing aggressions, every day more unscrupulous and criminal, against the economy of the nation.

"WHEREAS: Among the multiple measures adopted by the Government of the United States of North America, there stands out for its exceptional aggressiveness that of the general embargo on exportations from that country to Cuba with the intention of strangling our economy.

"WHEREAS: That measure in addition to violating the most elemental standards of international existence, constitutes an act of political coercion with which it pretends uselessly to weaken the popular force of the Cuban Revolu-

tion by creating difficulties for national supplies.

"WHEREAS: It is evident that this conduct of the Government of the United States of North America reveals the desperation and impotence of imperialism conducted by that Government; each day with more virulence, to employ the most unjust aggressions against our country.

"WHEREAS: It is the duty of the Revolutionary Government to defend the economy of the country.

"WHEREAS: Moreover, it is fundamental for the liberation and economic development of our country that the North American commercial and industrial firms be liquidated which presently constitute the remainder in our country of the financial capital of that country.

"THEREFORE: In use of the powers with which we are vested, in accordance with the provisions of Law No. 851 of June (sic July), 1960.

"RESOLVED

"FIRST: There is declared the nationalization by means of forced expropriation, and, consequently, there are adjudged in favor of the Cuban State in full dominium all the properties and firms located in the National Territory and the rights and actions resulting from the exploitation of these properties and concerns which

are the property of natural and juridical persons, nationals of the United States of America or operators of firms in which nationals of that country have a predominant interest, as follows:

* * * *

"Group XX — Insurance Companies
"Pan-American Life Insurance Co.

* * * *

"SECOND: Therefore, the Cuban State is declared subrogated in place and grade of the natural and juridical persons referred to in the preceding section with respect to the properties, rights and rights of action mentioned, as well as the assets and liabilities constituting the capital of the concerns referred to.

"THIRD: It is declared that these forced expropriations are effected for reasons of necessity and public use and national interest mentioned in the Whereas clauses of this Resolution."

REQUEST FOR ADMISSION NO. 4 (Record 64)

(Caption omitted)

The defendant, PAN AMERICAN LIFE INSURANCE COMPANY, requests the plaintiff named in the caption hereof, on or before November 25, 1961, to make the following admissions for the purpose of this action

only and subject to all pertinent objections to admissibility which may be interposed at the trial:

• • • •

4. That the policy of insurance herein involved was issued upon an application therefor made in Cuba, that delivery thereof was made in Cuba, and that notarization thereof was made in Cuba prior to delivery thereof.

PLAINTIFF'S REPLY TO REQUEST FOR ADMISSION No. 4 (Record 113)

(Caption omitted)

The Plaintiff, replying to Request for Admissions heretofore served upon her by Defendant, says as follows:

• • • •

4. Admitted.

ORDER ON MOTION FOR PROTECTION (Record 115)

(Caption omitted)

This cause came on to be heard upon the plaintiff's Motion for Order of Protection, and during the course of said argument counsel for the defendant stated that the only matter which he wished to establish by the deposition of the plaintiff mentioned in said motion was that she and her husband were citizens and Nationals of the

Republic of Cuba up to and including October 24, 1960, and counsel for the plaintiff in open court stipulated that the plaintiff and her husband were up to and including October 24, 1960, citizens and Nationals of the Republic of Cuba. Whereupon, counsel for the defendant stated that with this stipulation there was no occasion to take said deposition, and the Court being fully advised in the premises, it is, therefore,

ORDERED and ADJUDGED that the plaintiff's Motion for Protective Order be granted.

DONE and ORDERED at Miami, Dade County, Florida, this 22nd day of December, 1961.

/s/ HAL P. DEKLE
CIRCUIT JUDGE.

PRE-TRIAL ORDER (Record 116)

(Caption omitted)

This cause came on to be heard upon a Pre-Trial Conference, during the course of which it was STIPULATED between counsel for the respective parties as follows:

1. That the form of policy in English filed by the defendant in response to the interrogatory propounded by the plaintiff is a true and correct translation of the policy herein involved, and that copy or a duplicate thereof may be received in evidence without other proof.

2. That the insured, JOSE LORIDO, died on October 6, 1960.

3. That the English translations of the Cuban laws attached to the defendant's Requests for Admissions are true and correct translations of the laws referred to and may be admitted in evidence without other or further proof of the correctness of the translation subject, however, to proof by the defendant of the existence of the laws of which they purport to be translations.

4. That affidavits of two practising lawyers in Dade County, Florida, as to the amount of attorneys' fees may be received in evidence without the production of the affiants on the witness stand, but the defendant reserves the right to object to the allowance of any attorneys' fees whatever in this case, even though the plaintiff be successful.

DONE and ORDERED at Miami, Dade County, Florida, this 5th day of January, 1962.

/s/ HAL P. DEKLE
CIRCUIT JUDGE.

EXCERPTS FROM TESTIMONY OF DR. FRANCISCO FIGUEROA (Record 198)

"DIRECT EXAMINATION

BY MR. DIXON:

Q Will you please state your name.
A Francisco Figueroa.

Q Where are you presently residing?
A In Miami.

Q What is your nationality?
A Cuban.

Q What has been your educational background?
A Well, elementary and high school education in Cuba and in the States in Pennsylvania, and then Doctor in Law at Havana University, and LLB degree at Tulane University in 1934.

Q And since 1934, what has been your occupation or profession?
A Practicing attorney.

Q And where?
A In Havana with the firm of Lazo Y Cubas.

Q And can you give the Court any idea of the size of that firm?
A Well, when we had to close and leave Cuba we were 22 lawyers.

Q Have you done any work in any specialized field?

MR. MUNSON: Does that make him a better lawyer, Mr. Dixon?

MR. DIXON: It shows that they have been successful.

MR. MUNSON: That is problematical. Go ahead.

Q (By Mr. Dixon) Have you specialized in any particular field of law?
A Yes. For the different fields during the years.

I mean, railroad law, insurance and contracts, operation of law in general.

* * * * *

Q (By Mr. Dixon) Dr. Figuero, have you familiarized yourself with Law No. 568 of September, 1959?

A Yes.

Q Do you have the Spanish text and the English translation of that law?

A Yes, sir. It is the law of 1968.

MR. MUNSON: 1968?

THE WITNESS: 568. I am sorry. Law 568, September 23rd, 1959, published in the Official Gazette of September 29, 1959.

Q (By Mr. Dixon) Have you compared the English translation with the Spanish text?

A Yes.

Q Does the English translation correctly reflect the substance of the Spanish text?

A It does.

MR. DIXON: We offer it in evidence.

* * * * *

Q (By Mr. Dixon) Dr. Figuero, have you familiarized yourself with the Spanish text of the expropriation decree of October 24, 1958?

A Yes.

Q Do you have the Spanish text here and the English translation?

A We have the English translation and the Spanish text published by this publication called Leyes del Gobierno Provisional de la Revolucion. It is not the official— The official publication is the Official Gazette.

Q What is the nature and function of the book which you hold in your hand, and how is it used?

A Well, this book—this book was published right after January 1st, 1959, when Castro came into power and they started to issue new laws, and to familiarize—I mean, to get to the interested parties, the attorneys, the justices and everybody— I mean, this is sort of a compilation, a monthly compilation of all those laws.

Q Is that generally used and accepted by Cuban Bar as being the correct statement of decrees issued by the government?

A Yes, yes. I have had opportunities in many cases because, unfortunately, many of our clients were affected by this resolution, the resolution of the President of the Republic, and I have worked many times with this booklet after, of course, having checked with the Official Gazette.

Q And is the booklet which you hold in your hand, is that your property or the property of some others?

A It is the property of the University of Miami. Dr. Riverend.

Q It has been borrowed from them?

A Yes.

MR. DIXON: If the Court please, we would at this time request— We will offer the book, or that portion of the book which embodies Resolution No. 3, together with the English translation, and I would like to substitute a photostatic copy of the English text so that the book itself can be returned to the University of Miami.

MR. MUNSON: I don't see any objection to that, your Honor, subject to my usual objection.

THE COURT: All right, then, the English translation of it— You need not submit the book at all. I don't believe it will serve any purpose at this time.

MR. MUNSON: That is the same as Resolution No. 3, Mr. Dixon?

MR. DIXON: Yes.

THE COURT: This is the Resolution No. 3, what I would refer to as the infamous resolution with regard to confiscation generally by the Castro regime.

MR. DIXON: This one names specific companies.

THE COURT: And it includes this defendant?

MR. DIXON: Yes, sir. It refers to Pan American Insurance Company in Paragraph 20. This one names the specific American companies and expropriates their assets.

We will offer that in evidence.

* * * *

BY MR. DIXON:

Q Dr. Figueroa, I have only two further questions of you that I can think of now. One is this: Under the law of Cuba, what effect did the Resolution No. 3 which you have identified have upon the relationship between the insured or the beneficiary and the Pan American Life Insurance Company?

MR. MUNSON: Objection, your Honor. Now, this is a matter for the interpretation of the Court and not for an expert witness.

We stipulated that we would permit these lawyers from Cuba to testify as expert witnesses in connection with the admissibility of particular laws, but he is drawing a legal conclusion. It is only permissible for a judicial tribunal to rule on.

THE COURT: I will consider his answer only as advisory only. I will overrule the objection.

THE WITNESS: Well, the Resolution No. 3, the effect of Resolution No. 3 was to subrogate and place instead of Pan American Life Insurance Company, in this case, which is specifically mentioned in Resolution No. 3, the Cuban government who would take over the assets, the properties—assets and liabilities. They would assume the liabilities of the company and everything as a consequence of the expropriation and nationalization of this company.

The Cuban government— the Banco de Seguros Sociales de Cuba in this case would go ahead and was au-

thorized by Resolution No. 3 to record in their name in the mercantile registries and companies—all the company's property, everything concerning the company in Cuba.

So they are and they continue in Cuba with that business. I mean Pan American—I mean that certain activities of Pan American Life Insurance or the other companies have been continued by the government and serviced by the government. So I would say that the government has subrogated and is in place instead of Pan American Insurance as the insurance company with respect to the insured. Especially where—of course, not especially but, of course, contracts issued in Cuba to a Cuban citizen, which is considered—it is a Cuban contract issued by the Havana office.

Q (By Mr. Dixon) Is it the substance of your answer, then, that the Cuban government is liable, if anyone is, on this contract?

A Yes."

EXCERPT FROM TESTIMONY OF DR. EDUARDO LE RIVEREND (Record 235)

"DIRECT EXAMINATION

BY MR. DIXON:

Q Please state your full name and present place of residence.

A Eduardo le Riverend, and my address is 550 Southwest 7th Street, Miami.

Q Doctor, are you a citizen and national of Cuba?
A Yes, by birth.

Q And will you tell us what your educational background has been?
A Well, I was in elementary school in Cuba, high school in Cuba, and I have my degree as a doctor in civil law from the University of Havana in 1928.

Q And what has been your experience in the practice or teaching of law?
A Teaching. Well, since 1938 up to the 14th of January, 1959, I was a professor of civil law in the University of Havana, and besides, I was invited two or three times by the University of Miami to deliver some lectures on different matters.

Q Have you ever held any official position in the Republic of Cuba?
A Yes. Well, this was an official position in the University of Havana, but besides—

Q Have you held any other position?
A Since the 14th of January until the 19th of December—January, 1959, up to the 19th of December, 1960, when I resigned, I was Associate Justice of the Supreme Court of the Republic of Cuba.

Q Doctor, you have been present in the room and have heard the testimony that has been offered here as to the transaction relating to this policy of insurance?
A Yes.

Q Will you please tell us what effect on the Cuban

law Resolution No. 3 would have upon the Republic between the Pan American Insurance Company and either its insured or the beneficiary in the policy presently involved in this cause.

MR. MUNSON: Your Honor, I will make the same objection that I made before. This case is being tried under the law of Florida. The policy plainly recites that performance of the policy is to be made in New Orleans, Louisiana, and the payments would be made in dollars and cents, and the benefits thereof will be paid in Louisiana in dollars and cents.

The law of Cuba is inapplicable in this matter and is immaterial in this case.

THE COURT: Overruled. You may answer.

THE WITNESS: I think Resolution No. 3 is very clear. It states that this resolution was issued by the President of the Republic in compliance with a previous law, No. 8051, July, 1960. The resolution is dated the 24th of October, 1960. It states in the first paragraph and it orders the nationalization by means of expropriation and by consequences going to the Cuban state in full property all belongings, all goods and property and firms situated in the national territory and the rights and rights of action coming from the exploitation of said businesses which are the property of North Americans or natural persons, and then he states the numbers and lists the complete list of the firms which were expropriated.

Paragraph No. 2 expresses this very clearly:

"'Consequently, it is declared that the Cuban state is subrogated in stead of the natural and jurisdictional persons referred to in the preceding section with respect to the properties, rights, and rights of actions above mentioned, as well as receipts and liabilities which form the capital of the said firms.'

So, in my opinion, inasmuch as this resolution doesn't say that these firms have to go out from the country — no, they just put instead of such firms, some other entity which is the Cuban state represented by the Cuban government. From now on, from this date or from the date in which this resolution was applied to any company, instead of such company you may go to the Cuban government and present any right that you think of against those companies and the government has to comply with the contracts and go ahead between— In this case, between the insured person and the company. So the Cuban government is in the place of the insurance company."

TEXT OF LAW NO. 568 of September 29, 1959.

NOTE: This appears in the record twice, — first, as part of defendant's request for admission (Record page 64) and second, as an exhibit introduced in evidence at the trial. The first record reference is page 98, the second is at page 210, where the text of this law was admitted into evidence as Defendant's Exhibit J.

"I, Osvaldo Dorticos Torrado, President of the Republic of Cuba, do hereby proclaim that the following law has been enacted by the Council of Ministers and approved by me, to wit:

WHEREAS: Title II of Law No. 13 of December 23, 1948, provided for the organization of the Currency Stabilization Fund, and entrusted it with the fundamental mission of protecting the national currency on the exchange market, for which purpose the legislation supplementary thereto broadened the scope of its powers vesting it with the authority necessary for the regulation of international exchange transactions.

WHEREAS: During the years in which the tryanny was in power a constant drainage of foreign exchange was propitiated to cover the funds taken away by the beneficiaries of the deposed government, a practice which some interested parties are still trying to continue through speculation and by deviating the channels of incoming foreign exchange on which the nation depends, or by the remittance of foreign funds through illegal methods, thereby ostensible delaying the restoration of our monetary reserves and the preferential application of the national resources to the economic development of the nation.

WHEREAS: It is necessary therefore, to define clearly and precisely the felonious acts constituting crimes against the economy of the na-

tion, fixing the penalties applicable to the different degrees of criminal liability, and to confer upon the Currency Stabilization Fund and the judiciary the broad powers required for the protection of the general interests of the Republic.

NOW, THEREFORE; In pursuance of the powers vested in it, the Council of Ministers has resolved to enact the following

LAW NO. 568

Article 1.—For the purposes of this law, the following are considered felonies of monetary contraband:

* * * *

(6) To export currency or securities, or to transfer funds to points abroad by means of checks, transfers, drafts, letter-orders, orders of payment, compensations, traveller' checks, letters of credit, reimbursements of collections, purchases or sales of passage tickets or through any other similar means, regardless of the origin or source of the funds, except for those cases authorized by the Currency Stabilization Fund, through a member bank or a firm duly authorized by Banco Nacional de Cuba.

7) To export or import national currency in excess of the limit that set now or hereafter by the Currency Stablization Fund.

8) To establish credits in national currency for persons residing abroad or for residents of Cuba for the account of residents abroad.

9) To assign or transfer credits in national currency to residents abroad, make payments for their account in national currency and set up credits in bank accounts the holders whereof reside broad without first complying with the rules issued by the Currency Stabilization Fund in this respect.

10) To receive and credit to bank accounts kept abroad, or to transfer to third parties collections made abroad for business transacted or services rendered in Cuba, regardless of the source or origin of the respective funds.

• • • •

Article 2. — The persons guilty of the felony of currency contraband referred to in the preceding article shall be liable to a penalty of imprisonment for from 6 months and 1 day to 3 years, or a fine of one to two thousands quotas, or both.

If the felony is committed by directors, representatives, officers or employees of banks, corporations, or artificial persons while acting in pursuance of their functions as such, the penalty shall be increased from one fourth to one half, in the discretion of the Court, and the firm to

which they belong will be subsidiarily liable for the cash penalties imposed.

Article 3. — a) Any person who sells or in any way assigns, transfers or transmits currency, checks, drafts, orders of payment, travellers' checks or any similar paper in foreign currency shall be liable to imprisonment for from 6 months and 1 day to 3 years; or to a fine of one to two thousand quotas, or both."

PORTIONS OF TEXT OF RESOLUTION NO. 3 OF OCTOBER 24, 1960.

NOTE: The full text of this Resolution appears in the record twice, — first as a part of defendant's request for admissions and second, as an exhibit admitted in evidence at the trial as Defendant's Exhibit K (Record page 213).

"RESOLUTION NO. 3

"WHEREAS, The Imperialist interests whose representatives control the Government of the United States of North America, in their intention to utilize every means which they consider effective to impede the consolidation of the Cuban Revolution, have continued committing aggressions, every day more unscrupulous and criminal, against the economy of the nation.

"WHEREAS: Among the multiple measures adopted by the Government of the United States

of North America, there stands out for its exceptional aggressiveness that of the general embargo on exportations from that country to Cuba with the intention of strangling our economy.

"WHEREAS: That measure in addition to violating the most elemental standards of international existence, constitutes an act of political coercion with which its pretends uselessly to weaken the popular force of the Cuban Revolution by creating difficulties for national supplies.

"WHEREAS: It is evident that this conduct of the Government of the United States of North America reveals the desperation and impotence of imperialism conducted by that Government; each day with more virulence, to employ the most unjust aggressions against our country.

"WHEREAS: It is the duty of the Revolutionary Government to defend the economy of the country.

"WHEREAS: Moreover, it is fundamental for the liberation and economic development of our country that the North American commercial and industrial firms to be liquidated which presently constitute the remainder in our country of the financial capital of that country.

"THEREFORE: In use of the powers with

which we are vested, in accordance with the provisions of Law No. 351 of June (sic July), 1960.

"RESOLVED

"FIRST: There is declared the nationalization by means of forced expropriation, and, consequently, there are adjudged in favor of the Cuban State in full dominium all the properties and firms located in the National Territory and the rights and actions resulting from the exploitation of these properties and concerns which are the property of natural and juridical persons, nationals of the United States of America or operators of firms in which nationals of that country have a predominant interest, as follows:

* * * *

Group XX — Insurance Companies
"Pan-American Life Insurance Co.

* * * *

"SECOND: Therefore, the Cuban state is declared subrogated in place and grade of the natural and juridicial persons referred to in the preceding section with respect to the properties, rights and rights of action mentioned, as well as the assets and liabilities constituting the capital of the concerns referred to.

"THIRD: It is declared that these forced ex-

propriations are effected for reasons of necessity and public use and national interest mentioned in the Whereas clauses of this Resolution."

FINAL JUDGMENT dated June 6, 1962 (Record 276)

(Caption omitted)

This action is at law by the surviving widow of the deceased insured. Plaintiff is named beneficiary in the policy in question. This case was duly tried before the court without a jury, there being no demand for jury trial.

The policy was issued in 1943 in New Orleans, Louisiana, but was delivered to the insured in Havana, Cuba, where he then lived and later died a Cuban national in 1960. There is no dispute that premiums have been duly paid. The issue arises by virtue of defendant's denial of liability on the grounds that the Cuban monitary decree of 1951 in pursuance of Cuban Law #13 of 1948, required all contracts theretofore payable in dollars to or by Cuban nationals in Cuba to be paid in Cuban pesos instead. Defendant contends that this modified the terms of the policy which provided for payment in United States dollars in New Orleans. Defendant additionally alleged that thereafter the insured agreed with the defendant that the terms of the policy be modified accordingly and submitted evidence that payments thereafter were in fact paid in pesos instead of dollars, thus adopting or ratifying the method of payment in pesos.

Defendant's third position is that the confiscation

of defendant's insurance business in Cuba by Cuban Resolution #3 avoids any liability under this contract and that a post-Castro law #568 in 1959 prohibited the payment of any monies to Cuban nationals anywhere except in Cuba.

The court has rejected these same contentions, save that regarding the alleged action of the parties in subsequent dealings in pesos for payments under this policy, in this court's opinion of even date in **Raij v Pan American Life Insurance Company**, Circuit Court of Dade County, in Chancery, 61C 7089.

The Court finds in this cause that on the issue of the asserted change of the provision of the policy regarding payment in dollars, that the insured by his actions in both paying premiums and receiving benefits in pesos, thereby accepted the modification for such payment under Cuban law for the purposes of his insurance contract, and that the terms of the policy for payment in dollars was effectively modified and the insured, and now his beneficiary, this plaintiff, is bound thereby but is entitled to recover benefits hereunder in Cuban pesos or the equivalent thereof in United States dollars at the present United States exchange rate, based upon the face amount of the policy, interest and other benefits provided in the policy and accordingly.

IT IS ORDERED that plaintiff do have and recover of and from the defendant said sums upon application and calculation of the amount involved as above provided.

IT IS FURTHER ORDERED that plaintiff do have and recover of and from defendant the further sum of

$1,500.00 in United States Dollars hereby fixed and awarded as a reasonable attorney's fee for services herein of plaintiff's attorneys.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 6th day of June, 1962.

/s/ HAL P. DEKLE
CIRCUIT JUDGE

cc: Ray A. Munson, Esq.

Dixon, DeJarnette, Bradford,
Williams, McKay & Kimbrell, Esqs.

DEFENDANT'S MOTION FOR NEW TRIAL

(Record 117)
(Caption omitted)

COMES NOW the defendant in the above styled cause and moves the court to set aside the judgment, findings of fact and conclusions of law; for a judgment in favor of said defendant notwithstanding the court's findings and judgment entered in this cause without a jury trial, and if these motions are denied, the defendant moves the Court for an order granting a new trial in this cause on the following grounds, separately and severally, to-wit:

(1) The verdict, judgment, findings of fact and conclusions of law are contrary to the evidence.

(2) The verdict, judgment, findings of fact and conclusions of law are contrary to the manifest weight of the evidence.

(3) The court erred in failing and refusing to give effect in this cause to Cuban Law No. 13 of 1948.

(4) The court erred in failing and refusing to give effect in this cause to Cuban Law No 568, of September 29, 1959.

(5) The court erred in failing and refusing to give effect in this cause to Cuban Resolution No. 3, of October 24, 1960, substituting the Cuban State as the obligor on policies of insurance issued by defendant in Cuba.

(6) The court erred in failing and refusing to give effect to Article VIII, sec. 2(b) of the Bretton Woods Monetary Agreement of 1945, to its adoption as the law of the United States of America by Congressional enactment, in 22 U. S. C. A. section 286 eq seq., and particularly sec. 286 H.

(7) The court erred in failing and refusing to follow the public policy of the United States of America extending diplomatic recognition to the revolutionary (Castro) government of Cuba, thereby recognizing it as a sovereign power, with powers over its currency, foreign exchange and the rights and duties of its na-

tionals equal to those of the United States of America.

DATED this 12th day of June, 1962.

DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Building,
Miami 32, Florida,

By: /s/ JAMES A. DIXON
Attorneys for Defendant.

I CERTIFY that on this 12th day of June, 1962, a true copy of the foregoing Motion to Set Aside Judgment, Findings of Fact and Conclusions of Law; Motion for New Trial, and Motion for Judgment Nothwithstanding Court's Findings and Judgment was mailed to RAY A. MUNSON, Ingraham Building, Miami, Florida.

/s/ JAMES A. DIXON

AMENDED FINAL JUDGMENT, dated September 24, 1962 (Record 278)

This action is at law by the surviving widow of the deceased insured. Plaintiff is named beneficiary in the policy in question. This case was duly tried before the court without a jury, there being no demand for jury trial.

The policy was issued in 1943 in New Orleans, Louisiana, but was delivered to the insured in Havana, Cuba, where he then lived and later died a Cuban na-

tional in 1960. There is no dispute that premiums have been duly paid. The issue arises by virtue of defendant's denial of liability on the grounds that the Cuban monitary decree of 1951 in pursuance of Cuban Law #13 of 1948, required all contracts theretofore payable in dollars to or by Cuban nationals in Cuba to be paid in Cuban pesos instead. Defendant contends that this modified the terms of the policy which provided for payment in United States dollars in New Orleans. Defendant additionally alleged that thereafter the insured agreed with the defendant that the terms of the policy be modified accordingly and submitted evidence that payments thereafter were in fact paid in pesos instead of dollars, thus adopting or ratifying the method of payment in pesos.

Defendant's third position is that the confiscation of defendant's insurance business in Cuba by Cuban Resolution #3 avoids any liability under this contract and that a post-Castro law #568 in 1959 prohibited the payment of any monies to Cuban nationals anywhere except in Cuba.

The court has rejected these same contentions, save that regarding the alleged action of the parties in subsequent dealings in pesos for payments under this policy, in the court's opinion of even date in **Raij v Pan American Life Insurance Company**, Circuit Court of Dade County, in Chancery, 61C 7089.

The court finds in this cause that on the issue of the asserted change of the provision of the policy regarding payment in dollars, that the insured by his actions in both paying premiums and receiving benefits in pesos, thereby accepted the modification for such payment un-

der Cuban law for the purposes of his insurance contract, and that the terms of the policy for payment in dollars was effectively modified and the insured, and now his beneficiary, this plaintiff, is bound thereby but is entitled to recover benefits hereunder in Cuban pesos or the equivalent thereof in United States dollars at the rate of exchange of Cuban pesos for United States Dollars prevailing in Miami, Florida, on November 28, 1960, based upon the face amount of the policy, interest and other benefits provided in the policy.

The court finds and determines that the proper conversion date, aforesaid is November 28, 1960, that being the date of a letter from the defendant to the attorneys for the plaintiff denying liability for the claim asserted against the defendant by the plaintiff.

The court thereupon heard testimony of witnesses for the respective parties as to the said rate of exchange prevailing on said date, and based upon such testimony the court finds and determines that said exchange rate on said date was that one Cuban peso was worth $.245 United States dollars.

The court thereupon by separate order and judgment, entered judgment in favor of the plaintiff and against the defendant, which said separate order and judgment are hereby incorporated herein as fully as though set out herein in words and figures.

The court further heard argument of counsel for the respective parties on the defendant's motions to set aside judgment, findings of fact and conclusions of law, motion for new trial and motions for judgment notwith-

standing court's findings and judgment, and on consideration therefore, it is

ORDERED and ADJUDGED that the said motions be and they are hereby denied.

DONE and ORDERED in Chambers at Miami, Dade County, Florida, this 24th day of September, 1962.

/s/ HAL P. DEKLE
CIRCUIT JUDGE.

FINAL MONEY JUDGMENT

dated September 24, 1962 (Record 281)

(Caption omitted)

THIS CAUSE came on to be heard on Plaintiff's Motion to Tax Costs and for the Entry of a Final Money Judgment pursuant to the Final Judgment of this Court entered on the 6th day of June, 1962, and the Court having heard argument of counsel and being otherwise fully advised in the premises, it is, upon consideration thereof,

ORDERED and ADJUDGED that the Plaintiff, MARIE LORIDO do have and recover of and from the Defendant, PAN AMERICAN LIFE INSURANCE COMPANY, a New Orleans corporation, the sum of One Thousand Nine Hundred Thirty-Nine & 64/100 Dollars ($1939.64) together with the further sum of Fifteen Hundred Dollars ($1,500) as attorney's fee and her costs expended in the prosecution of this action which are hereby taxed in the amount of Three Hundred Five & 07/100

Dollars ($305.07), for all of which sums let execution issue immediately.

DONE and ORDERED in Chambers in Miami, Dade County, Florida, this 24 day of Sept., 1962.

/s/ HAL P. DEKLE
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 1962, a true copy of the foregoing Appendix to Appellant's Brief was mailed to RAY A. MUNSON, 340 Ingraham Building, Miami 32, Florida.

JAMES A. DIXON, JR.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT JANUARY TERM, A. D. 1963

CASE NO. 62-624

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

vs.

MARIE LORIDO,
Appellee.

Opinion filed May 14, 1963.

An Appeal from the Circuit Court for Dade County, Hal P. Dekle, Judge.

Dixon, DeJarnette, Bradford, Williams, McKay & Kimbrell, for appellant.

Ray A. Munson, for appellee.

Before PEARSON, C.J., and HORTON and HENDRY, JJ.

PER CURIAM.

Affirmed on the authority of Pan American Life Insurance Co. v. Recio, Fla.App.1963, __So.2d__. [Case No. 62-452, opinion filed May 7, 1963, not yet reported]

A True Copy
ATTEST:
WILLIAM P. CARTER
Clerk District Court Of Appeal
of Florida, Third District
By EVELYN A. HILLMAN
Deputy Clerk

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

CASE NO. 62-624

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

vs.

MARIE LORIDO,
Appellee.

PETITION FOR REHEARING

Comes now PAN-AMERICAN LIFE INSURANCE COMPANY, Appellant herein, and moves this Honorable Court to grant a rehearing of this cause, and for grounds thereof shows:

1. The opinion in this case affirms the judgment of the lower court on the authority of the opinion of this court in the case of PAN-AMERICAN LIFE INSURANCE COMPANY v. RECIO (Case No. 62-452).

2. Your petitioner has filed a petition for rehearing in the last mentioned case, a true copy of which is attached hereto and made a part hereof, and your petitioner adopts the statements therein contained as the grounds of this petition.

3. The opinion of this court in the RECIO case did

not refer to or otherwise pass upon the defense asserted by your petitioner in that case based upon Cuban Law No. 568, the Bretton Woods Agreement relating to the International Monetary Fund, and the Federal legislation pertaining thereto (22 U. S. C. A. 286 et seq.). Your petitioner assumes that this was due to the fact that this court had previously stricken from your petitioner's brief in the RECIO case the section relating to this defense. No such action was taken in the present case and the sufficiency of this defense was argued both in the briefs and in oral argument. An express ruling by this court upon such an important matter as a Federal executive agreement approved by both Houses of the Congress and legislated in part into the law of the United States (22 U. S. C. A. 286 h) would be of great assistance to other courts which will be called upon to pass on this matter in other cases. The legal questions presented by this defense are of such importance that they should not be disposed of **sub silentio.**

Respectfully submitted,

DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Building,
Miami 32, Florida,

By: JAMES A. DIXON
Attorneys for Appellant.

CERTIFICATE OF SERVICE

I CERTIFY that on this 16th day of May, 1963, a true copy of the foregoing Petition for Rehearing was mailed to MR. RAY A. MUNSON, 340 Ingraham Building, Miami 32, Florida, the attorney of record for the plaintiff in the foregoing cause.

JAMES A. DIXON

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

CASE NO. 62-452

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

vs.

AGUSTIN GOYTISOLO RECIO,
Appellee.

PETITION FOR REHEARING

Comes now PAN-AMERICAN LIFE INSURANCE COMPANY, Appellant herein, and petitions this Honorable Court to grant a rehearing in this cause, and as grounds for this petition shows:

1. The opinion in this case was filed May 7, 1963. A few days later on May 14, 1963, this Court filed an opinion in Case No. 61-827, styled NATIONAL INSTITUTE OF AGRARIAN REFORM v. TERRY KANE, et al.

2. Your petitioner respectfully suggests that these two opinions are inconsistent with each other, as will hereafter be pointed out.

(a) The confiscation complained of in the Kane case was effected under Resolution No. 3, of October 24, 1960, of the Republic of Cuba. If the Court will refer to the text of

this resolution attached to the Answer of your petitioner in the Circuit Court, the Court will see that AGENCIO de TRACTORES y EQUIPOS, of which the Kanes were stockholders, is listed as one of the concerns expropriated by section 1 of that resolution. Its name appears in Group XXI in that section. This is the same resolution which expropriated your petitioner, whose name appears in Group XX of this same section.

(b) In section 2 of this resolution, it is provided that the Cuban State is substituted as the obligor on the liabilities of the expropriated concerns. See also the affidavit of the Cuban lawyer, DR. MENDIGUTIA.

(c) In the Kane case, the opinion recognizes that the expropriation effected by the first section of the resolution was an "act of state" on which the courts of this country will not sit in judgment.

(d) In this case, the court apparently says that the substitution of obligors effected by the second section of the resolution was not an "act of state" and refused to recognize its effectiveness upon the rights of Cuban nationals. Your petitioner is thereby deprived of a defense accruing to it under Cuban law.

(e) The application of the "act of state" doctrine in the Kane case frees an agency of the Republic of Cuba from liability to an American citizen. The refusal to apply that doctrine in this case imposes a liability on an American company from which the law of the plaintiff's sovereign has relieved it.

3. This Court has apparently in this case relied heavily upon the case of BANCO NACIONAL de CUBA v. SABBATINO, 307 F. 2d 845, notwithstanding the fact that in that case certiorari has been granted by the U. S. Supreme Court, although this fact is adverted to in the Kane opinion. The opinion in this case also relies upon the case of RODRIGUEZ v. PAN-AMERICAN, 311 F. 2d 429, which is now pending in the U. S. Supreme Court on petition for certiorari. The Court in this case has apparently overlooked the fact that neither of these cases is final.

4. The opinion in this case states that your petitioner relies "most heavily" upon the case of DOUGHERTY v. EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, 266 N. Y. 71; 193 N. E. 897, which the opinion then proceeds to distinguish on its particular facts. The Court has apparently overlooked the fact that your petitioner relies even more heavily upon cases such as BERNSTEIN v. VAN HEYGHEN FRERES, 163 F. 2d 246, and PONS v. REPUBLIC OF CUBA, 294 F. 2d 925, (cert. denied in both) which are recognized as controlling authority in the Kane opinion. Your petitioner also relies heavily upon the decision in TILLMAN v. NATIONAL CITY BANK, 118 F. 2d 631 (cert. denied 314 U. S. 1009, 62 S. Ct. 96, 86 L. Ed. 521) in

its holding that a recognized foreign sovereign has the power to force an "involuntary novation" upon its nationals.

5. Since the opinion in this case does not discuss or even cite the case of PAN-AMERICAN LIFE INS. CO. v. BLANCO, 311 F. 2d 424, your petitioner can only assume that the Court has overlooked it.

6. The opinion in this case says that your petitioner asks that this Court "enforce the expropriation decrees entered by the present government of Cuba." This portion of the opinion does not fairly state the position of your petitioner. That position is that Resolution No. 3 not only expropriated the Cuban assets of your petitioner but also, and most important, substituted the Cuban State as the obligor upon prior liabilities. Recognition of this fact is a far cry from "enforcing expropriation decrees". This resolution is used as a shield by your petitioner, not as a sword. In the Kane case, the opinion permitted it to be used as a shield by the NATIONAL INSTITUTE OF AGRARIAN REFORM. In the SABBATINO case, the National Bank of Cuba was using the resolution as a sword, asking affirmative relief based upon it. We believe that the Court in this case has overlooked this distinction.

Respectfully submitted,

DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Building,
Miami 32, Florida,

By: JAMES A. DIXON
Attorneys for Appellant.

CERTIFICATE OF SERVICE.

I CERTIFY that on this 15th day of May, 1963, a true copy of the foregoing Petition for Rehearing was mailed to CAREY, GOODMAN, TERRY, DWYER & AUSTIN, 650 Seybold Building, Miami 32, Florida, the attorneys of record for the Appellee herein.

JAMES A. DIXON

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT JANUARY TERM, A.D. 1963
WEDNESDAY, MAY 29, 1963

CASE NO. 62-624

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

vs.

MARIE LORIDO,
Appellee.

Counsel for appellant having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:

WILLIAM P. CARTER
Clerk District Court of
Appeal, Third District
By EVELYN A. HILLMAN
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

vs.

MARIE LORIDO,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT.

RAY A. MUNSON,
340 Ingraham Building,
Miami 32, Florida,

Attorney for Respondent.

JAMES A. DIXON and
DAVID S. STERN,
DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Building,
101 East Flagler Street,
Miami 32, Florida

Attorneys for Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT

TO THE SUPREME COURT OF THE STATE OF FLORIDA:

Petitioner, PAN-AMERICAN LIFE INSURANCE COMPANY, presents this, its petition for a Writ of Certiorari and states:

1. Petitioner seeks to have reviewed a decision of the District Court of Appeal, Third District, dated May 14, 1963, and filed in the records of said District Court on the 14th day of May, 1963, in Minute Book 6, Page 235, and an order dated May 29th, 1963, and filed in the records of said District Court on the 29th day of May, 1963, in Minute Book 6, Page 263.

2. This petition is presented under and pursuant to Article 5, Section 4, of the Florida Constitution and Rule 4.5c of the Florida Appellate Rules.

3. This petition is accompanied by a certified copy of the decision of the said Court in the case of PAN-AMERICAN LIFE INSURANCE COMPANY v. KECIO, Fla. App. 1963, No. 62-452, opinion filed May 7, 1963, not yet reported, on the authority of which the said court in this case affirmed the lower court per curiam.

4. The following are the facts of this case:

(a) The respondent, MARIE LORIDO, is the widow of a deceased Cuban national to whom PAN-AMERICAN LIFE INSURANCE COMPANY issued a

policy of insurance in Cuba in 1943. The respondent is herself a national of Cuba.

(b) The application for the policy in question was made in Spanish and in Havana. The policy, which was in Spanish, was prepared in the home office in New Orleans, was mailed to the company's general agent in Havana. It was countersigned and taken by the general agent before a Cuban notary in Havana, and the general agent authenticated the signatures of the company's officers by notarial act. The policy was then delivered in Cuba to the insured and the first premium paid in Havana.

(c) The policy was originally payable in U. S. dollars. Judge Dekle, in the Circuit Court, ruled that, due to certain facts proved during the trial, it had been converted, by the agreement of the company and the insured, into a peso policy.

(d) The insured died in the early part of October, 1960, but no proof of death was submitted to the company until during the trial, at which time a death certificate was produced by the plaintiff and introduced into evidence. This suit was brought by the beneficiary to recover the death benefits.

(e) The company based its defense principally upon certain Cuban laws. These are as follows:

(1) The monetary law No. 13 of 1948, and an implementing Resolution No. 1384. The law created the National Bank of Cuba and provided that after a date

to be fixed by resolution the Cuban peso would be the only legal tender. Resolution No. 1384 fixed this date as July 1, 1951. Prior to that time both the Cuban peso and the U. S. dollar had been legal tender. However, Judge Dekle's ruling, that, by agreement, the policy had been converted to a peso policy, made this law immaterial. However, his ruling to this effect was not made for some time after the Spanish text (and English translation) of this law and resolution had been admitted into evidence.

(2) Law No. 568, of September 29, 1959. This is the Monetary Contraband Law which makes it illegal to pay money to a Cuban national (or to receive money from a Cuban national) anywhere except in Cuba or in any currency except Cuban pesos, or even to make credit available to a Cuban national except in Cuba and in Cuban currency. It was contended in the lower court (and is here) that this law destroyed the right of Cuban nationals, such as the plaintiff, to sue in the courts of this country on a claim for a dollar recovery. It was also contended in the lower court (and is here) that this is the type of currency control law contemplated by Art. VIII (2)(b) of the Bretton Woods Agreement, which by Con-

gressional enactment (22 U. S. C. A. 286 et seq.) has become a part of the law of the United States, which the courts, State and Federal, are required to enforce.

(3) Law No. 851 of June, 1960. This provided for the issuance of resolutions of intervention and expropriation. By Resolution No. 3 of October 24, 1960, promulgated in pursuance of this law, the Cuban assets of the appellant forcibly expropriated, and the Cuban state was substituted as the obligor on the Appellant's outstanding Cuban policies of insurance. It was contended in the lower court (and is here) that this took away from the plaintiff the right of the plaintiff to look to the appellant for performance and confined her to her rights under the policy against the Republic of Cuba.

(f) At the trial the petitioner introduced into the record the testimony of Sr. J. V. Bird, appellant's general agent in Cuba, showing the forcible expropriation of the appellant's Cuban assets.

(g) The petitioner also presented the testimony of two prominent Cuban lawyers, Dr. Francisco Figueroa and Dr. Eduardo Le Riverend. These gentlemen testified as to the existence of the Cuban laws and resolutions above referred to and as to their legal effect under Cuban law upon the rights of the plaintiff. Their testimony

completely upheld the petitioner's position, and was uncontradicted.

(h) On June 6, 1962, Judge Dekle entered what is styled a final judgment, but it reserved a ruling, in effect, upon the equivalent in Cuban pesos of the face amount of the policy The appellant filed a motion for a new trial and at a subsequent hearing, at which testimony was taken, Judge Dekle fixed the conversion value of the Cuban peso at $.24 ½ in U. S. currency and entered what is styled as amended final judgment, denied the appellant's motion for a new trial and entered a money judgment in favor of the plaintiff.

(i) The District Court of Appeal affirmed per curiam.

5. On the foregoing facts the Court was presented with the following points of law:

> WHEN A RECOGNIZED FOREIGN SOVEREIGN ENACTS A LAW EXPROPRIATING THE ASSETS IN THE SOVEREIGN'S TERRITORY BELONGING TO AN AMERICAN INSURANCE COMPANY AND ASSUMES THE LIABILITIES OF SUCH INSURANCE COMPANY TO ITS NATIONALS, MAY A NATIONAL OF THAT SOVEREIGN SUE IN THE COURTS OF THIS COUNTRY TO COMPEL THE INSURANCE COMPANY TO PAY POLICY BENEFITS ON CONTRACTS MADE IN THE TERRITORY OF THE FOREIGN SOVEREIGN?

On this point of law the District Court of Appeal,

Third District, held, by its reliance upon its own opinion in the **RECIO** case above-cited that the "act of State" doctrine did not apply to the expropriation of petitioner and the substitution of the Republic of Cuba as the obligor on the policies of insurance theretofore issued by the petitioner in Cuba.

6. The same point of law was involved in the case of NATIONAL INSTITUTE OF AGRARIAN REFORM v. TERRY KANE, et al., decided by the District Court of Appeal, Third District, on May 14, 1963, Case No. 61-827, not yet reported. A certified copy of that opinion is attached to this petition as Exhibit 1. The facts involved in that case were as follows:

(a) A Cuban corporation, AGENCIO de TRACTORES y EQUIPAS, S. A., in which the controlling stockholders were American citizens, was expropriated by Resolution No. 3, of October 24, 1960, the same decree by which the petitioner was expropriated.

(b) These American citizens sued the NATIONAL INSTITUTE OF AGRARIAN REFORM, an arm of the government of the Republic of Cuba for the value of the expropriated property, and were able to obtain personal jurisdiction thereof.

(c) The lower court entered judgment against the defendant, who took an appeal.

On these facts the District Court of Appeal, Third District, ruled that the "act of State" doctrine "did apply and that the Court could not declare the invalidity of

the Cuban decree" as a basis for creating a right of recovery in the plaintiff in this cause.

7. The decision of the District Court of Appeal which the petitioner seeks to have reviewed is in direct conflict with the decision in the **KANE** case. Because of the reasons and authorities set forth in petitioner's brief, it is believed that the decision hereby sought to be reviewed is erroneous, and that the conflicting decision in the **KANE** case is correct and should be approved by this Court as the controlling law for the State of Florida.

8. (a) The petitioner would further show that the decision here sought to be reviewed also involved a further question of law which may be stated as follows:

> WHEN A RECOGNIZED FOREIGN SOVEREIGN ENACTS A LAW WHICH PROHIBITS PAYMENTS TO OR BY ITS NATIONALS ANYWHERE EXCEPT IN THE SOVEREIGN'S TERRITORY AND IN THE SOVEREIGN'S CURRENCY, MAY A CITIZEN AND NATIONAL OF THAT SOVEREIGN MAINTAIN AN ACTION IN THE COURTS OF THIS COUNTRY TO COMPEL PAYMENT OF A DEBT IN THIS COUNTRY AND IN THE CURRENCY OF THIS COUNTRY?

(b) This question is raised by Cuban Law No. 568, referred to above, and the effect required to be given it by the Bretton Woods Agreement, which provided for the creation of the International Monetary Fund, and the Federal Statutes implementing it and enacting two

portions of the Agreement into the positive law of the United States. See 22 U. S. C. A. 286, particularly 286 h.

(c) The District Court of Appeal, Third District, made no mention of this question in its per curiam opinion in this case, and it was likewise passed over in the opinion in the **RECIO** case, on the authority of which this case was affirmed.

(d) The petitioner assigned error on this question and it was argued orally and in the briefs. Petitioner likewise called the attention of the court to this question in its petition for rehearing. Despite this, neither this opinion nor the opinion in the **RECIO** case made mention of the matter.

(e) The petitioner can only assume that the District Court of Appeal, sub silentio, held the Bretton Woods Agreement to be invalid though approved by both Houses of Congress, and also held invalid the Federal Statute above cited.

WHEREFORE, the petitioner requests this Court:

(a) To grant a Writ of Certiorari and enter its order quashing the decision and order hereby sought to be reviewed, approving the decision in the **KANE** case as the correct decision;

(b) If this court shall be of the opinion that the question mentioned in paragraph 8 hereof is one as to which an appeal only lies, that this petition be deemed to be treated as an appeal from the decision of the District Court of Appeal, as one initially passing upon the validity

of a Federal statute and treaty, as provided in Art. V, Sec. 4(2) of the Constitution of the State of Florida.

Respectfully submitted,

DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Bldg.,
101 East Flagler Street,
Miami 32, Florida

By: JAMES A. DIXON
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Petition was served by mail on RAY A. MUNSON, attorney of record for the respondent, on the 11th day of June, 1963. I further certify that a copy of this Petition was today filed in the office of the clerk of the District Court of Appeal, Third District.

DATED this 12th day of June, 1963.

DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Bldg.,
101 East Flagler Street,
Miami 32, Florida,

By: JAMES A. DIXON
Attorneys for Petitioner

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1963
TUESDAY, JULY 16, 1963

CASE NO. 32,795

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

vs.

MARIE LORIDO,
Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the District Court of Appeal of Florida, Third District, in said cause bearing date May 14, 1963, and the record having been inspected, it is ordered that said Petition be and the same is hereby denied.

A True Copy

TEST:

GUYTE P. McCORD
Clerk Supreme Court.

CLERK CERTIFICATE

I, William P. Carter, Clerk of the District Court of Appeal, Third District, do hereby certify as follows:

1. The foregoing pages numbered 1 to ___ are true and correct copies of the following documents in my custody and control as clerk of the said court, to wit:

(a) The appendix to the brief of the appellant, Pan-American Life Insurance Company, in the above captioned cause.

(b) The order and decision of this court affirming the judgment of the court from which appeal was taken to this court.

(c) The petition for rehearing filed in this court by the appellant.

(d) The order of this court denying said petition for re-hearing.

(e) The petition for a writ of certiorari from the Supreme Court of Florida to this court in this cause.

(f) The order of the Supreme Court of Florida denying said petition for certiorari.

2. The appellee herein, Marie Lorido, did not file an appendix to her brief in this court.

3. The petition for a writ of certiorari mentioned in (c) above was filed within the time allowed by law and the Florida Appellate Rules and a copy thereof was filed in my office as required or permitted thereby.

4. The Supreme Court of Florida did not render any opinion in connection with its order denying the said petition for a writ of certiorari.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of this court at Miami, Dade County, Florida, this day of , 1963.

William P. CARTER, Clerk,
District Court of Appeal,
Third District

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Office-Supreme Court, U.S.
FILED
AUG 15 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 379

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

v.

MARIE LORIDO,
Respondent.

Petition for a Writ of Certiorari to The Supreme Court of the State of Florida

JAMES A. DIXON
DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. _____

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

v.

MARIE LORIDO,
Respondent.

Petition for a Writ of Certiorari to The Supreme Court of the State of Florida

---

Pan-American Life Insurance Company respectfully prays that a writ of certiorari issue to review the judgment of The Supreme Court of Florida entered herein on July 16, 1963, denying a petition for certiorari to the Florida District Court of Appeal, Third District, which affirmed a judgment entered in the Circuit Court of Dade County, Florida, in favor of the respondent herein, who was the plaintiff in the trial court.

OPINIONS BELOW

The opinion of the Circuit Court of Dade County, Florida, is reported in 19 Fla. Supp. 167, which refers to an opinion by the same court entered simultaneously in a similar case, *Raij v. Pan-American Life Insurance Company,* which is reported in 19 Fla. Supp. 162?

The opinion of the Florida District Court of Appeal, Third District, is reported in 154 So. 2d, 200. This opinion affirms, per curiam, the judgment of the Circuit Court of Dade County, on the authority of an opinion of the said District Court of Appeal, in another companion case, *Pan-American Life Insurance Company, Appellant v. Recio*, which is reported in 154 So. 2d 197.

The judgment of the Supreme Court of Florida is dated July 16, 1963, is docketed in that court under No. 32,795, and is at present unreported. It is without opinion and merely denies the petition for certiorari to the District Court of Appeal.

Your petitioner is, simultaneously with the filing of this petition in this court, also filing a petition for a writ of certiorari to the Florida District Court of Appeal, Third District, in this case. The reason for this is that counsel for petitioner is uncertain whether the denial of certiorari by the Supreme Court of Florida is based upon a lack of jurisdiction to grant certiorari in this type of case, or upon an exercise of discretion to refuse to review the decision of the District Court of Appeal.

JURISDICTION

The date of the judgment sought to be reviewed and the time of its entry is July 16, 1963. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257, (3). No rehearing has been sought. No extension of time to petition for certiorari has been sought.

QUESTIONS PRESENTED FOR REVIEW

Three questions are presented by this record. They are:

1. May the Courts of this country hold invalid a law promulgated by a recognized foreign sovereign (the Republic of Cuba) which restricted the rights of its nationals to whom money is owed to receipt of payment only in Cuba and only in Cuba pesos, without a special permit from the National Bank of Cuba?

2. May the Courts of this country enforce a contract between a Cuban national and an American corporation when such enforcement would result in the violation of a Cuban currency control law maintained and imposed consistently with Art. VIII, Section 2(b) of the Bretton Woods Agreement creating the International Monetary Fund, of which both Cuba and the United States are members?

3. May the Courts of this country hold invalid a law (and an implementing executive resolution) of a recognized foreign sovereign, which expropriated the Cuban assets of an American life insurance company doing business there, and substituted the Cuban State as the obligor on outstanding insurance policies, at least in so far as the rights of Cuban nationals are concerned?

THE STATUTES AND DECREES INVOLVED

The Statutes, Executive Agreement and Decrees involved are:

(1) Cuban Law No. 568 of September 29, 1959. The pertinent text thereof is set forth in the Appendix hereto, page 1.

(2) Cuban Law No. 851 of July 6, 1960, and Resolution No. 3 of October 24, 1960, promulgated in pursuance of Law No. 851. The pertinent text thereof is set forth in the Appendix hereto, pages 5 and 7.

(3) The Bretton Woods Agreement creating the International Monetary Fund. The pertinent text thereof is set forth in the Appendix hereto, at page 9.

(4) 22 U.S.C., Sec. 286 et seq. The pertinent text thereof is set forth in the Appendix hereto, at page 15.

STATEMENT OF THE CASE

This action was filed in the Circuit Court of Dade County, Florida, by Marie Lorido as the named beneficiary of the death benefits provided by a policy of insurance issued by Pan-American Life Insurance Company in Cuba in 1943 upon the life of her late husband. The insured died about October 6, 1960, in Cuba.

The policy had originally been payable in dollars, but the court ruled that by the subsequent conduct of the company and the insured, a novation had occurred to the extent of making the policy payable in Cuban pesos.

On January 1, 1959, the government of which Fidel Castro was and is Premier came into power. A few days later, the United States extended diplomatic recognition to that Government, which has continued to this day.

LAW NO. 568

On September 29, 1959, the Republic of Cuba adopted Law No. 568,[1] mentioned above. The text, in Spanish and English, was introduced in evidence in the trial court. Two experienced Cuban lawyers, one of them a former member of the Supreme Court of Cuba, testified that under this law it was a felony for any Cuban national to make or receive payment of a debt thereafter becoming payable anywhere except in Cuba, or in any currency except Cuban pesos, without a special permit from the National Bank of Cuba. This law also made it a felony for a Cuban national to have credits set up for him in a foreign nation, without the specified permit.

The plaintiff is and was at all times a national of Cuba and did not have the required permit.

These facts raised the first of the questions presented stated above. This question was first raised in the trial court in the answer filed by the defendant. During the trial, it was raised by the offer into evidence of the texts of Law No. 568 and the testimony of the two Cuban lawyers. It was also raised by the defendant's motion for new trial, by assignment of error on appeal, and in briefs and argument in the District Court of Appeal. The references in the partial Transcript of Record which accompanies this petition are: The answer, page 5, the text of the law, page 24, the Cuban lawyers' testimony, pages 15 and 21, the motion for a new trial, page 33. The briefs in the appellate courts are not a part of this record.

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[1]This law is sometimes referred to as a law of October 4, 1959. The discrepancy arises from the fact that the law is dated September 29, but was not published in the Official Gazette until October 4.

The opinion of the trial court just barely mentions this question, and then only as being the basis of one of the defendant's contentions, which were summarily rejected.

The opinion in this case in the District Court of Appeal, being per curiam, also does not mention this question, nor is it mentioned in that court's opinion in the *Recio* case, on the authority of which this case was affirmed.

The effect of the holding of the trial court in this case, and of the District Court of Appeal in this and the *Recio* case, is to hold Law No. 568 invalid and of no effect upon the rights of Cuban nationals, and deprives the American company of a defense properly available to it under Cuban law.

It is believed that this is, in effect, a decision denying the application of the Act of State doctrine, in circumstances in which this Court for many years has held it applicable.

THE BRETTON WOODS AGREEMENT AND 22 U.S.C. 268 ET SEQ.

In the trial court and the District Court of Appeal, the defendant took the position that Law No. 568 is the type of currency control law envisioned by the Bretton Woods Agreement, Art. VIII, Section 2 (b), the first sentence of which was specifically enacted into our domestic laws by 22 U.S.C., Section 286(h). By silently ignoring this question, the courts below have, in effect, held one or more of the following:

(a) Law No. 568 is not a currency control law of the type envisioned in Art. VIII, Section 2 (b) of the Bretton Woods Agreement.

(b) The life insurance contract, under which death benefits are sought to be recovered, is not an exchange contract which involves the currency of Cuba.

(c) That Law No. 568 is not maintained or imposed consistently with the Bretton Woods Agreement.

Since at no time did the plaintiff attack the constitutionality of 22 U.S.C. 286 et seq., we assume that the courts below did not pass upon this question. But it is believed that a federal question of substance has, in effect, been decided and decided in a way probably not in accord with applicable decisions of this court. Cf. *Kolovrat v. Oregon*, 366 U.S. 187.

LAW NO. 851 AND RESOLUTION NO. 3

Law No. 851 was promulgated on July 6, 1960. It shows on its face that it was in retaliation against the reduction of the Cuban sugar quota by the United States. It is the same law involved in the case of *Banco Nacional de Cuba v. Sabbatino, et al*, now pending in this court on certiorari granted, under No. 403, October 1962, Term. Pan-American Life Insurance Company sought, and has been granted, leave to file a brief *amicus curiae* in that case through the same counsel presenting the instant petition for certiorari.

Law No. 851 authorized the issuance of subsequent resolutions of intervention and expropriation against United States concerns and Cuban concerns subject to

American control. Resolution No. 1 under this law is involved in the *Sabbatino* case. The present case involves Resolution No. 3 thereunder.

Resolution No. 3 was promulgated on October 24, 1960. It starts off with a long recital of the reasons for its issuance. Section 1 then proceeds to decree the intervention and expropriation of a long list of businesses, broken down into groups according to the nature of their business. In group XX are listed numerous insurance companies, including Pan-American Life Insurance Company. The concerns in this group were assigned for administrative purposes to the Social Security Bank, which was authorized to appoint an administrator. Two days later, the administrator so appointed appeared at the Havana branch office of Pan-American and at gun-point took possession of the office, its records and the key to the safe deposit box in which its securities and reserves against its Cuban liabilities were kept.

Resolution No. 3 went further than expropriation. In Section 2, it provided, among other things, that the Cuban State was substituted as obligor upon the outstanding liabilities of the expropriated concerns. The plaintiff's claim for death benefits under the policy herein involved was among these liabilities.

In the trial court, the defendant offered the testimony of the same two Cuban lawyers who stated that the effect of this law and resolution was to terminate the liability of Pan-American to the plaintiff and to confine the plaintiff, a Cuban national, to her rights against the Republic of Cuba under Section 2. Their testimony was uncontradicted.

The trial court, as stated above, summarily rejected the defendant's contentions based on Law No. 851 and Resolution No. 3, although there is some discussion of them in the judge's decision in the *Raij* case decided simultaneously by the same judge. The effect of the holding was that the law and resolution were ineffectual to accomplish the result expressed in Section 2 and confirmed by the testimony of the two Cuban lawyers. The holding deprived the defendant of a defense afforded it under Cuban law.

This question was raised in the answer, by the introduction of the Spanish and English texts of the legislation, by the testimony of the Cuban lawyers, by the motion for new trial and by assignment of error on appeal. The record reference for the legislative text is page 10. All other references are the same as for Law No. 568.

It is believed that this is a decision denying the application of the Act of State doctrine in circumstances in which this Court has for many years held the doctrine applicable. As such, it is a decision of a Federal question of substance in a way probably not in accord with applicable decisions of this Court.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT AND BRIEF ARGUMENT IN SUPPORT THEREOF

1. This case is equally as important in the field of international relations as the *Sabbatino* case, in which this court has already granted certiorari. This case represents the obverse side of the coin under examination in *Sabbatino*. That case involves the effect of Cuban ex-

propriation on a Cuban corporation alleged to be controlled by United States stockholders. This case involves the effect of Cuban expropriation of American companies and their outstanding liabilities to Cuban nationals in the United States.

Pan-American Life alone had outstanding more than 6000 policies issued through its Havana branch. It is impossible to know how many of these policy-holders or beneficiaries are among the hundreds of thousands of Cubans now resident in the United States. It is known that there are many of these policies presently in litigation, and more to come. There are about twenty such suits pending in the State and Federal courts in Miami alone. Others have been filed in Jacksonville, New Orleans, Galveston, Shreveport, Raleigh, Newark, and San Juan, Puerto Rico.

One lawyer in Miami says he has two hundred more ready to be filed and one other American company is informed that several hundred more are available for filing in the New York city area alone. One Cuban lawyer is known to have run advertisements in Spanish-language papers in San Juan and Miami offering his services in the collection of policy benefits.

The pending suits involve all kinds of policy claims—death benefits, cash surrender values, annuities, endowments, as well as declarations that the companies must accept premiums to keep policies in force and pay benefits upon future demand. Some cases are in State Courts, others in the Federal courts.

Two appellate opinions have already been rendered by State appellate courts, diametrically opposed to each other.

One is the *Recio* case in Florida, referred to above. The other is a decision of the Court of Appeal of Louisiana, in the case of *Theye v. Pan-American*, not yet reported. A copy of the opinion is printed in the Appendix hereto at page 38. Even within the same court, there is confusion and difference.[2] Thus, in the *Recio* case one panel of judges held that Resolution No. 3 did not call for the application of the Act of State doctrine, while only one week later, another panel held that Resolution No. 3, applied to a Cuban corporation controlled by Americans, did require the application of the doctrine. See *National Institute of Agrarian Reform v. Kane*, 153 So. 2d 40, printed in the Appendix hereto at page 49.

All of these cases basically are to be decided upon questions of Federal law and the Federal statute and executive agreement. The decision of these Federal questions should be uniform throughout the country and free from the vagaries of decisions by courts of differing judicial systems. The only way such uniformity can be achieved is by a decision of this court. If it is adverse to the companies, they will undoubtedly pay their debts. If it is favorable to the companies, the decision of this court will put an end to the impending flood of litigation. In either event, there will be an enormous saving of money, legal manpower and judicial labor.

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[2]The *Recio* case was not analogous to this case in one important particular. The policy involved in *Recio* was at all times payable by its terms in dollars and in the United States, while the policy involved herein was payable in pesos. This is a further illustration of the confusion existing in this appellate court. In *Confederation Live Association v. Ugalde*, 151 So. 315, the same court reversed the lower court for treating a policy payable in Havana and in pesos as though it were payable in dollars.

2. The effect of the decision in this case is in conflict with numerous decisions of this Court applying the Act of State doctrine to the acts of a foreign sovereign then or later recognized diplomatically by this country. These are *Oetjen v. Central Leather Co.*, 246 U.S. 297; *Underhill v. Hernandez*, 168 U.S. 250; *American Banana Co. v. United Fruit Co.*, 213 U.S. 347; *Shapleigh v. Mier*, 299 U.S. 468; *U. S. v. Belmont*, 301 U.S. 324; *U. S. v. Pink*, 315 U.S. 203.

3. The effect of the decision in this case is to thwart the public policy of the United States, as expressed in the Bretton Woods Agreement creating the International Monetary Fund and the Congressional legislation in 22 U.S.C. 286 et seq. If Cuban law No. 568 is in fact a currency control law of the type envisioned in Art. VIII, section 2 (b) of the Agreement, if the life insurance contract here involved is an exchange contract which involves the currency of Cuba and if Law No. 568 is maintained and imposed consistently with the Agreement, the Congressional mandate and the Supremacy clause of the Constitution, require that the contract not be enforced by our courts, State or Federal.

The Oregon courts faced squarely up to this question in *Kolovrat v. Oregon*, 366 U.S. 187. The Florida courts should not be permitted to slide over this important question in silence.

4. Pan-American Life Insurance Company has pending in this court a petition for certiorari to the United States Court of Appeal for the Fifth Circuit in two cases under this Court's No. 792, October Term, 1962. That case and this overlap to some extent, in that both involve Law

No. 568. They differ in that the expropriation decree in No. 792 was Law No. 151, enacted on March 17, 1959, which set up the "black list" of proscribed supporters of Batista. The cases under No. 792 were begun in the summer of 1960, several months before the issuance of Resolution No. 3. A disposition by this Court of No. 792 will, therefore, not settle one of the most important questions involved in this case. Pan-American Life therefore urges that it would be advisable to grant both petitions, so that full consideration may be given to Law No. 151, Law No. 568 and Law No. 851 and Resolution No. 3, and their effect upon the reciprocal rights and duties between Cuban nationals and American business concerns.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari be granted.

James A. Dixon
Dixon, DeJarnette, Bradford,
Williams, McKay & Kimbrell
101 East Flagler Street
Miami, Florida

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AUG 15 1963
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 880

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

v.

MARIE LORIDO,
Respondent.

Petition for a Writ of Certiorari to The District Court of Appeal of Florida, Third District

JAMES A. DIXON
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. _____

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

v.

MARIE LORIDO,
Respondent.

Petition for a Writ of Certiorari to The District Court of Appeal of Florida, Third District

---

Pan-American Life Insurance Company respectfully prays that a writ of certiorari issue to review the judgment of The District Court of Appeal of Florida, Third District, entered herein on May 7, 1963, with rehearing denied May 29, 1963, which affirmed a judgment entered in the Circuit Court of Dade County, Florida, in favor of the respondent herein.

OPINIONS BELOW

The opinion of the Circuit Court of Dade County, Florida, is reported in 19 Fla. Supp. 167, which refers to an opinion by the same court entered simultaneously in a similar case, *Raij v. Pan-American Life Insurance Company*, which is reported in 19 Fla. Supp. 162.

The opinion of the Florida District Court of Appeal, Third District, is reported in 154 So. 2d, 200. This opinion affirms, per curiam, the judgment of the Circuit Court of Dade County, on the authority of an opinion of the said District Court of Appeal, in another companion case, *Pan-American Life Insurance Company, Appellant v. Recio,* which is reported in 154 So. 2d 197.

The Respondent herein filed in The Supreme Court of Florida a petition for a writ of certiorari from that court to the said District Court of Appeal. This petition was denied, without opinion, on July 16, 1963.

Your petitioner is, simultaneously with the filing of this petition in this court, also filing a petition for a writ of certiorari to the Supreme Court of Florida in this case. The reason for this is that counsel for petitioner is uncertain whether the denial of certiorari by the Supreme Court of Florida is based upon a lack of jurisdiction to grant certiorari in this type of case, or upon an exercise of discretion to refuse to review the decision of the District Court of Appeal.

JURISDICTION

The date of the judgment sought to be reviewed and the time of its entry is May 7, 1963, with petition for rehearing denied May 29, 1963. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257, (3). No extension of time to petition for certiorari has been sought.

QUESTIONS PRESENTED FOR REVIEW

Three questions are presented by this record. They are:

1. May the Courts of this country hold invalid a law promulgated by a recognized foreign sovereign (the Republic of Cuba) which restricted the rights of its nationals to whom money is owed to receipt of payment only in Cuba and only in Cuba pesos, without a special permit from the National Bank of Cuba?

2. May the Courts of this country enforce a contract between a Cuban national and an American corporation when such enforcement would result in the violation of a Cuban currency contr' law maintained and imposed consistently with Art. VIII, Section 2(b) of the Bretton Woods Agreement creating the International Monetary Fund, of which both Cuba and the United States are members?

3. May the Courts of this country hold invalid a law (and an implementing executive resolution) of a recognized foreign sovereign, which expropriated the Cuban assets of an American life insurance company doing business there, and substituted the Cuban State as the obligor on outstanding insurance policies, at least in so far as the rights of Cuban nationals are concerned?

THE STATUTES AND DECREES INVOLVED

The Statutes, Executive Agreement and Decrees involved are:

(1) Cuban Law No. 568 of September 29, 1959. The pertinent text thereof is set forth in the Appendix hereto, page 1.

(2) Cuban Law No. 851 of July 6, 1960, and Resolution No. 3 of October 24, 1960, promulgated in pursuance of Law No. 851. The pertinent text thereof is set forth in the Appendix hereto, pages 5 and 7.

(3) The Bretton Woods Agreement creating the International Monetary Fund. The pertinent text thereof is set forth in the Appendix hereto, at page 9.

(4) 22 U.S.C., Sec. 286 et seq. The pertinent text thereof is set forth in the Appendix hereto, at page 15.

STATEMENT OF THE CASE

This action was filed in the Circuit Court of Dade County, Florida, by Marie Lorido as the named beneficiary of the death benefits provided by a policy of insurance issued by Pan-American Life Insurance Company in Cuba in 1943 upon the life of her late husband. The insured died about October 6, 1960, in Cuba.

The policy had originally been payable in dollars; but the court ruled that by the subsequent conduct of the company and the insured, a novation had occurred to the extent of making the policy payable in Cuban pesos.

On January 1, 1959, the government of which Fidel Castro was and is Premier came into power. A few days later, the United States extended diplomatic recognition to that Government, which has continued to this day.

LAW NO. 568

On September 29, 1959, the Republic of Cuba adopted Law No. 568,[1] mentioned above. The text, in Spanish and English, was introduced in evidence in the trial court. Two experienced Cuban lawyers, one of them a former member of the Supreme Court of Cuba, testified that under this law it was a felony for any Cuban national to make or receive payment of a debt thereafter becoming payable anywhere except in Cuba, or in any currency except Cuban pesos, without a special permit from the National Bank of Cuba. This law also made it a felony for a Cuban national to have credits set up for him in a foreign nation, without the specified permit.

The plaintiff is and was at all times a national of Cuba and did not have the required permit.

These facts raised the first of the questions presented stated above. This question was first raised in the trial court in the answer filed by the defendant. During the trial, it was raised by the offer into evidence of the texts of Law No. 568 and the testimony of the two Cuban lawyers. It was also raised by the defendant's motion for new trial, by assignment of error on appeal, and in briefs and argument in the District Court of Appeal. The references in the partial Transcript of Record which accompanies this petition are: The answer, page 5, the text of the law, page 24, the Cuban lawyers' testimony, pages 15 and 21, the motion for a new trial, page 33. The briefs in the appellate courts are not a part of this record.

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[1]This law is sometimes referred to as a law of October 4, 1959. The discrepancy arises from the fact that the law is dated September 29, but was not published in the Official Gazette until October. 4.

The opinion of the trial court just barely mentions this question, and then only as being the basis of one of the defendant's contentions, which were summarily rejected.

The opinion in this case in the District Court of Appeal, being per curiam, also does not mention this question, nor is it mentioned in that court's opinion in the *Recio* case, on the authority of which this case was affirmed.

The effect of the holding of the trial court in this case, and of the District Court of Appeal in this and the *Recio* case, is to hold Law No. 568 invalid and of no effect upon the rights of Cuban nationals, and deprives the American company of a defense properly available to it under Cuban law.

It is believed that this is, in effect, a decision denying the application of the Act of State doctrine, in circumstances in which this Court for many years has held it applicable.

THE BRETTON WOODS AGREEMENT AND 22 U.S.C. 268 ET SEQ.

In the trial court and the District Court of Appeal, the defendant took the position that Law No. 568 is the type of currency control law envisioned by the Bretton Woods Agreement, Art. VIII, Section 2 (b), the first sentence of which was specifically enacted into our domestic laws by 22 U.S.C., Section 286(h). By silently ignoring this question, the courts below have, in effect, held one or more of the following:

(a) Law No. 568 is not a currency control law of the type envisioned in Art. VIII, Section 2 (b) of the Bretton Woods Agreement.

(b) The life insurance contract, under which death benefits are sought to be recovered, is not an exchange contract which involves the currency of Cuba.

(c) That Law No. 568 is not maintained or imposed consistently with the Bretton Woods Agreement.

Since at no time did the plaintiff attack the constitutionality of 22 U.S.C. 286 et seq., we assume that the courts below did not pass upon this question. But it is believed that a federal question of substance has, in effect, been decided and decided in a way probably not in accord with applicable decisions of this court. Cf. *Kolovrat v. Oregon*, 366 U.S. 187.

LAW NO. 851 AND RESOLUTION NO. 3

Law No. 851 was promulgated on July 6, 1960. It shows on its face that it was in retaliation against the reduction of the Cuban sugar quota by the United States. It is the same law involved in the case of *Banco Nacional de Cuba v. Sabbatino, et al*, now pending in this court on certiorari granted, under No. 403, October 1962, Term. Pan-American Life Insurance Company sought, and has been granted, leave to file a brief *amicus curiae* in that case through the same counsel presenting the instant petition for certiorari.

Law No. 851 authorized the issuance of subsequent resolutions of intervention and expropriation against United States concerns and Cuban concerns subject to

American control. Resolution No. 1 under this law is involved in the *Sabbatino* case. The present case involves Resolution No. 3 thereunder.

Resolution No. 3 was promulgated on October 24, 1960. It starts off with a long recital of the reasons for its issuance. Section 1 then proceeds to decree the intervention and expropriation of a long list of businesses, broken down into groups according to the nature of their business. In group XX are listed numerous insurance companies, including Pan-American Life Insurance Company. The concerns in this group were assigned for administrative purposes to the Social Security Bank, which was authorized to appoint an administrator. Two days later, the administrator so appointed appeared at the Havana branch office of Pan-American and at gun-point took possession of the office, its records and the key to the safe deposit box in which its securities and reserves against its Cuban liabilities were kept.

Resolution No. 3 went further than expropriation. In Section 2, it provided, among other things, that the Cuban State was substituted as obligor upon the outstanding liabilities of the expropriated concerns. The plaintiff's claim for death benefits under the policy herein involved was among these liabilities.

In the trial court, the defendant offered the testimony of the same two Cuban lawyers who stated that the effect of this law and resolution was to terminate the liability of Pan-American to the plaintiff and to confine the plaintiff, a Cuban national, to her rights against the Republic of Cuba under Section 2. Their testimony was uncontradicted.

The trial court, as stated above, summarily rejected the defendant's contentions based on Law No. 851 and Resolution No. 3, although there is some discussion of them in the judge's decision in the *Raij* case decided simultaneously by the same judge. The effect of the holding was that the law and resolution were ineffectual to accomplish the result expressed in Section 2 and confirmed by the testimony of the two Cuban lawyers. The holding deprived the defendant of a defense afforded it under Cuban law.

This question was raised in the answer, by the introduction of the Spanish and English texts of the legislation, by the testimony of the Cuban lawyers, by the motion for new trial and by assignment of error on appeal. The record reference for the legislative text is page 10. All other references are the same as for Law No. 568.

It is believed that this is a decision denying the application of the Act of State doctrine in circumstances in which this Court has for many years held the doctrine applicable. As such, it is a decision of a Federal question of substance in a way probably not in accord with applicable decisions of this Court.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT AND BRIEF ARGUMENT IN SUPPORT THEREOF

1. This case is equally as important in the field of international relations as the *Sabbatino* case, in which this court has already granted certiorari. This case represents the obverse side of the coin under examination in *Sabbatino*. That case involves the effect of Cuban ex-

propriation on a Cuban corporation alleged to be controlled by United States stockholders. This case involves the effect of Cuban expropriation of American companies and their outstanding liabilities to Cuban nationals in the United States.

Pan-American Life alone had outstanding more than 6000 policies issued through its Havana branch. It is impossible to know how many of these policy-holders or beneficiaries are among the hundreds of thousands of Cubans now resident in the United States. It is known that there are many of these policies presently in litigation, and more to come. There are about twenty such suits pending in the State and Federal courts in Miami alone. Others have been filed in Jacksonville, New Orleans, Galveston, Shreveport, Raleigh, Newark, and San Juan, Puerto Rico.

One lawyer in Miami says he has two hundred more ready to be filed and one other American company is informed that several hundred more are available for filing in the New York city area alone. One Cuban lawyer is known to have run advertisements in Spanish-language papers in San Juan and Miami offering his services in the collection of policy benefits.

The pending suits involve all kinds of policy claims—death benefits, cash surrender values, annuities, endowments, as well as declarations that the companies must accept premiums to keep policies in force and pay benefits upon future demand. Some cases are in State Courts, others in the Federal courts.

Two appellate opinions have already been rendered by State appellate courts, diametrically opposed to each other.

One is the *Recio* case in Florida, referred to above. The other is a decision of the Court of Appeal of Louisiana, in the case of *Theye v. Pan-American*, not yet reported. A copy of the opinion is printed in the Appendix hereto at page 38. Even within the same court, there is confusion and difference.[2] Thus, in the *Recio* case one panel of judges held that Resolution No. 3 did not call for the application of the Act of State doctrine, while only one week later, another panel held that Resolution No. 3, applied to a Cuban corporation controlled by Americans, did require the application of the doctrine. See *National Institute of Agrarian Reform v. Kane*, 153 So. 2d 40, printed in the Appendix hereto at page 49.

All of these cases basically are to be decided upon questions of Federal law and the Federal statute and executive agreement. The decision of these Federal questions should be uniform throughout the country and free from the vagaries of decisions by courts of differing judicial systems. The only way such uniformity can be achieved is by a decision of this court. If it is adverse to the companies, they will undoubtedly pay their debts. If it is favorable to the companies, the decision of this court will put an end to the impending flood of litigation. In either event, there will be an enormous saving of money, legal manpower and judicial labor.

---

[2]The *Recio* case was not analogous to this case in one important particular. The policy involved in *Recio* was at all times payable by its terms in dollars and in the United States, while the policy involved herein was payable in pesos. This is a further illustration of the confusion existing in this appellate court. In *Confederation Live Association v. Ugalde*, 151 So. 315, the same court reversed the lower court for treating a policy payable in Havana and in pesos as though it were payable in dollars.

2. The effect of the decision in this case is in conflict with numerous decisions of this Court applying the Act of State doctrine to the acts of a foreign sovereign then or later recognized diplomatically by this country. These are *Oetjen v. Central Leather Co.*, 246 U.S. 297; *Underhill v. Hernandez*, 168 U.S. 250; *American Banana Co. v. United Fruit Co.*, 213 U.S. 347; *Shapleigh v. Mier*, 299 U.S. 468; *U. S. v. Belmont*, 301 U.S. 324; *U. S. v. Pink*, 315 U.S. 203.

3. The effect of the decision in this case is to thwart the public policy of the United States, as expressed in the Bretton Woods Agreement creating the International Monetary Fund and the Congressional legislation in 22 U.S.C. 286 et seq. If Cuban law No. 568 is in fact a currency control law of the type envisioned in Art. VIII, section 2 (b) of the Agreement, if the life insurance contract here involved is an exchange contract which involves the currency of Cuba and if Law No. 568 is maintained and imposed consistently with the Agreement, the Congressional mandate and the Supremacy clause of the Constitution, require that the contract not be enforced by our courts, State or Federal.

The Oregon courts faced squarely up to this question in *Kolovrat v. Oregon*, 366 U.S. 187. The Florida courts should not be permitted to slide over this important question in silence.

4. Pan-American Life Insurance Company has pending in this court a petition for certiorari to the United States Court of Appeal for the Fifth Circuit in two cases under this Court's No. 792, October Term, 1962. That case and this overlap to some extent, in that both involve Law

No. 568. They differ in that the expropriation decree in No. 792 was Law No. 151, enacted on March 17, 1959, which set up the "black list" of proscribed supporters of Batista. The cases under No. 792 were begun in the summer of 1960, several months before the issuance of Resolution No. 3. A disposition by this Court of No. 792 will, therefore, not settle one of the most important questions involved in this case. Pan-American Life therefore urges that it would be advisable to grant both petitions, so that full consideration may be given to Law No. 151, Law No. 568 and Law No. 851 and Resolution No. 3, and their effect upon the reciprocal rights and duties between Cuban nationals and American business concerns.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari be granted.

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Office-Supreme Court, U.S.
FILED
AUG 15 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 379

PAN-AMERICAN LIFE INSURANCE COMPANY,

Petitioner,

v.

MARIE LORIDO,

Respondent.

Appendix To Petition for a Writ of Certiorari to The Supreme Court of the State of Florida

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. _____

PAN-AMERICAN LIFE INSURANCE COMPANY,

Petitioner,

v.

MARIE LORIDO,

Respondent.

Appendix To Petition for a Writ of Certiorari to The Supreme Court of the State of Florida

---

MINISTRY OF JUSTICE

LAW No. 568

(FOREIGN EXCHANGE CONTRABAND LAW)

I, Osvaldo Dorticos Torrado, President of the Republic of Cuba, do hereby proclaim that the following law has been enacted by the Council of Ministers and approved by me, to wit:

WHEREAS: Title II of Law No. 13 of December 23,

1948, provided for the organization of the Currency Stabilization Fund, and entrusted it with the fundamental mission of protecting the national currency on the exchange market, for which purpose the legislation supplementary thereto broadened the scope of its powers vesting it with the authority necessary for the regulation of international exchange transactions.

WHEREAS: During the years in which the tyranny was in power a constant drainage of foreign exchange was propitiated to cover the funds taken away by the beneficiaries of the deposed government, a practice which some interested parties are still trying to continue through speculation and by deviating the channels of incoming foreign exchange on which the nation depends, or by the remittance of foreign funds through illegal methods, thereby ostensibly delaying the restoration of our monetary reserves and the preferential application of the national resources to the economic development of the nation.

WHEREAS: It is necessary therefore, to define clearly and precisely the felonious acts constituting crimes against the economy of the nation, fixing the penalties applicable to the different degrees of criminal liability, and to confer upon the Currency Stabilization Fund and the judiciary the broad powers required for the protection of the general interests of the Republic.

NOW, THEREFORE: In pursuance of the powers vested in it, the Council of Ministers has resolved to enact the following

App. 3

LAW NO. 568

Article 1.— For the purposes of this law, the following are considered felonies of monetary contraband:

* * *

6. To export currency or securities, or to transfer funds to points abroad by means of checks, transfers, drafts, letter-orders, orders of payment, compensations, travellers checks, letters of credit, reimbursements of collections, purchases or sales of passage tickets or through any other similar means, regardless of the origin or source of the funds, except for those cases authorized by the Currency Stabilization Fund, through a member bank or a firm duly authorized by Banco Nacional de Cuba.

7. To export or import national currency in excess of the limit that set now or hereafter by the Currency Stabilization Fund.

8. To establish credits in national currency for persons residing abroad or for residents of Cuba for the account of residents abroad.

9. To assign or transfer credits in national currency to residents abroad, make payments for their account in national currency and set up credits in bank accounts the holders whereof reside abroad without first complying with the rules issued by the Currency Stabilization Fund in this respect.

10. To receive and credit to bank accounts kept abroad, or to transfer to third parties collections made

abroad for business transacted or services rendered in Cuba, regardless of the source or origin of the respective funds.

11. To secure financing payable abroad in foreign currency without the prior authorization of the Currency Stabilization Fund, except for transactions of banks associated to the Banco Nacional de Cuba with their home offices or foreign correspondents for the establishment of letters of credit, overdrafts and other normal activities of the banking business.

12. Any other violation or infringement of the rules of the Currency Stabilization Fund under which funds are transferred or remitted abroad in violation of the prohibitive rules of the same Fund or in a larger amount than is permitted thereby.

App. 5

CUBA
NATIONALIZATION LAW

July 6, 1960[1]

[Translation]

WHEREAS: The attitude assumed by the Government and legislative power of the United States of America of constant aggression for political purposes against the fundamental interests of the Cuban economy, emphatically evidenced by the amendment recently passed by the Congress of said country to the Sugar Act at the request of the executive power, by which the President of that nation is granted exceptional powers to reduce the participation of Cuban sugar in the sugar market of that country, as an arm of political action against Cuba, obliges the Revolutionary Government to adopt without hesitation, also the measures that it may deem pertinent for the defense of the national sovereignty and the free economic development of our country.

WHEREAS: Article 24 of the fundamental law authorizes the expropriation of properties referring to the regular law the naming of the authority competent to order the expropriation as well as the regulation of the procedure, and of the means and forms of payment.

WHEREAS: It is convenient for the achievement of the purposes proposed in the first WHEREAS clause of this law to grant to the President of the Republic and to the Prime Minister full powers to proceed with the na-

[1]Cuba, Gaceta Oficial, July 7, 1960; Folletos de Divulgacion Legislativa, XXII Leyes del Gobierno de la Revolution (julio 1960), p. 29.

tionalization of all concerns and properties of natural or juridical persons of the United States of America or of the concerns in which said persons have a majority interest or share, even though they may be organized under the Cuban laws, in order that in each future circumstance adequate measures for said purposes may be adopted.

THEREFORE: In use of the powers vested in it, the Council of Ministers has resolved to enact the following Law Number 851:

ARTICLE 1: The president of the Republic and the Prime Minister are authorized to order jointly by means of resolutions, whenever they may deem it convenient in defense of the national interest, the nationalization through expropriation, of the properties or concerns belonging to natural or juridical persons, nationals of the United States of America, or the concerns in which said persons have a majority interest or participation even though they be organized under the laws of Cuba.

ARTICLE 2: The President of the Republic and the Prime Minister in the resolution in which they order the expropriation shall declare its necessity and the cause of public use or national interest that has caused it.

ARTICLE 3: The President of the Republic and the Prime Minister in the resolutions referred to in Article 1 shall also appoint the persons or organizations that shall have charge of the properties or concerns subject of the expropriation.

RESOLUTION NO. 3

WHEREAS, The imperialist interests whose representatives control the Government of the United States of North America; in their intention to utilize every means which they consider effective to impede the consolidation of the Cuban Revolution, have continued committing aggressions, every day more unscrupulous and criminal, against the economy of the nation.

WHEREAS, Among the multiple measures adopted by the Government of the United States of North America, there stands out for its exceptional aggressiveness that of the general embargo on exportations from that country to Cuba with the intention of strangling our economy.

WHEREAS, That measure, in addition to violating the most elemental standards of international existence, constitutes an act of political coercion with which it pretends uselessly to weaken the popular force of the Cuban Revolution by creating difficulties for national supplies.

WHEREAS, It is evident that this conduct of the Government of the United States of North America reveals the desperation and impotence of imperialism conducted by that Government, each day with more virulence, to employ the most unjust aggressions against our country.

WHEREAS, It is the duty of the Revolutionary Government to defend the economy of the country.

WHEREAS, Moreover, it is fundamental for the

liberation and economic development of our country that the North American commercial and industrial firms be liquidated which presently constitute the remainder in our country of the financial capital of that country.

THEREFORE, In use of the powers with which we are vested, in accordance with the provisions of Law No. 851 of June (sic July), 1960.

RESOLVED

FIRST There is declared the nationalization by means of forced expropriation, and, consequently, there are adjudged in favor of the Cuban State in full dominium all the properties and firms located in the National Territory and the rights and actions resulting from the exploitation of these properties and concerns which are the property of natural and juridical persons, nationals of the United States of America or operators of firms in which nationals of that country have a predominant interest, as follows:

* * *

Group XX — Insurance Companies

Pan American Life Insurance Co.

* * *

SECOND, Therefore, the Cuban state is declared subrogated in place and grade of the natural and juridical persons referred to in the preceding section with respect to the properties, rights and rights of action mentioned, as well as the assets and liabilities constituting the capital of the concerns referred to.

ARTICLES OF AGREEMENT OF THE INTERNATIONAL MONETARY FUND

The Governments on whose behalf the present Agreement is signed agree as follows:

Introductory Article

The International Monetary Fund is established and shall operate in accordance with the following provisions:

Article I

Purposes

The purposes of the International Monetary Fund are:

(i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.

(ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.

(iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.

(iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.

(v) To give confidence to members by making the Funds resources available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures of national or international prosperity.

(vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

The Fund shall be guided in all its decisions by the purposes set forth in this Article.

INTERNATIONAL MONETARY FUND

Article VI. Capital Transfers.

Section 3. Controls of capital transfers.

Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3 (b), and in Article XIV, Section 2.

Article VIII. General Obligations of Members.

Section 1. Introduction

In addition to the obligations assumed under other articles of this Agreement, each member undertakes the obligations set out in this Article.

Section 2. Avoidance of restrictions on current payments.

(a) Subject to the provisions of Article VII, Section 3 (b), and Article XIV, Section 2, no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.

(b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, cooperate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

Article XVIII. Interpretation.

a) Any question of interpretation of the provisions of this Agreement arising between any member and the Fund or between any members of the Fund shall be submitted to the Executive Directors for their decision. If the question particularly affects any member not entitled to appoint an executive director it shall be entitled to representation in accordance with Article XII, Section 3 (j).

(b) In any case where the Executive Directors have given a decision under (a) above, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the result of the reference to the Board the Fund may, so far as it deems necessary, act on the basis of the decision of the Executive Directors.

Article XIX. Explanation of Terms.

In interpreting the provisions of this Agreement the Fund and its members shall be guided by the following:

(i) Payments for current transactions means payments which are not for the purpose of transferring capital, and includes, without limitation:

(1) All payments due in connection with foreign trade, other current business, including services, and normal short-term banking and credit facilities;

(2) Payments due as interest on loans and as net income from other investments;

(3) Payments of moderate amount for amortization of loans or for depreciation of direct investments;

(4) Moderate remittances for family living expenses.

The Fund may, after consultation with the members concerned, determine whether certain specific transactions are to be considered current transactions or capital transactions.

International Monetary Fund and Bank for Reconstruction and Rehabilitation.

286. Acceptance of Membership by United States in International Monetary Fund.

The president is authorized to accept membership for the United States in the International Monetary Fund (hereinafter referred to as the "Fund"), and in the International Bank for Reconstruction and Development (hereinafter referred to as the "Bank"), provided for by the Articles of Agreement of the Fund and the Articles of Agreement of the Bank as set forth in the Final Act of the United Nations Monetary and Financial Conference dated July 22, 1944, and deposited in the archives of the Department of State.

286h. Status, privileges, and immunities of the United States.

The provisions of article IX, sections 2 to 9, both inclusive, and the first sentence of article VIII, section 2 (b), of the Articles of Agreement of the Fund, and the provisions of article VI, section 5 (i), and article VII, sections 2-9, both inclusive, of the Articles of Agreement of the Bank, shall have full force and effect in the United States and its Territories and possessions upon acceptance of membership by the United States in, and the establishment of, the Fund and the Bank, respectively.

LORIDO v. PAN AMERICAN LIFE INS. CO.

No. 61-L-791
Circuit Court, Dade County
June 6, 1962.

Hal P. Dekle, Circuit Judge

This action is at law by the surviving widow of the deceased insured. Plaintiff is named beneficiary in the policy in question. This case was duly tried before the court without a jury, there being no demand for jury trial.

The policy was issued in 1943 in New Orleans, Louisiana, but was delivered to the insured in Havana, Cuba, where he then lived and later died a Cuban national in 1960. There is no dispute that premiums have been duly paid. The issue arises by virtue of defendant's denial of liability on the grounds that the Cuban monetary decree of 1951 in pursuant of Cuban Law #13 of 1948, required all contracts theretofore payable in dollars to or by Cuban nationals in Cuba to be paid in Cuban pesos instead. Defendant contends that this modified the terms of the policy which provided for payment in United States dollars in New Orleans. Defendant additionally alleged that thereafter the insured agreed with the defendant that the terms of the policy be modified accordingly and submitted evidence that payments thereafter were in fact paid in pesos instead of dollars, thus adopting or ratifying the method of payment in pesos.

Defendant's third position is that the confiscation of defendant's insurance business in Cuba by Cuban Resolution #3 of October 24, 1960 avoids any liability under this

contract and that a post-Castro law #568 in 1959 prohibited the payment of any monies to Cuban nationals anywhere except in Cuba.

The court has rejected these same contentions, save that regarding the alleged action of the parties in subsequent dealings in pesos for payments under this policy, in this court's opinion of even date in Raij v. Pan American Life Ins. Co., circuit court of Dade County, in chancery, no. 61-C-7089 [19 Fla. Supp. 162].

The court finds in this cause that on the issue of the asserted change of the provision of the policy regarding payment in dollars the insured by his actions in both paying premiums and receiving benefits in pesos thereby accepted the modification for such payment under Cuban law for the purposes of his insurance contract, and that the terms of the policy for payment in dollars were effectively modified, and the insured, and now his beneficiary, this plaintiff, is bound thereby but is entitled to recover benefits hereunder in Cuban pesos or the equivalent thereof in United States dollars at the present United States exchange rate, based upon the face amount of the policy, interest and other benefits provided in the policy, and accordingly it is ordered that plaintiff do have and recover of and from the defendant said sums upon application and calculation of the amount involved as above provided.

It is further ordered that plaintiff do have and recover of and from defendant the further sum of $1,500 in United States dollars hereby fixed and awarded as a reasonable attorney's fee for services hereby by plaintiff's attorney.

RAIJ v. PAN AMERICAN LIFE INS. CO.

No. 61-C-7089
Circuit Court, Dade County
June 6, 1962.

Hal P. Dekle, Circuit Judge

Plaintiff purchased from defendant in 1942 a life insurance policy which was issued from the defendant's home office in New Orleans but delivered in Cuba to the plaintiff, a Cuban national and a resident of Cuba at that time. This was a twenty year endowment policy and all premiums were paid to and accepted by defendant until November 1960, when the premium was refused and returned. Subsequent tenders of such premiums have been refused and plaintiff seeks a declaration of his rights to pay the premium and to require the defendant to accept them and further to declare that such policy is in full force and effect.

Defendant admits issuance of the policy and payment and tender of premiums but disclaims any further liability under the policy, inter alia, on the ground that the Castro Revolutionary Government of Cuba on October 24, 1960, by its now well known Resolution #3, forcibly expropriated the Cuban division of defendant insurance company and substituted the present Cuban Revolutionary Government as "obligor" on all of defendant's Cuban liabilities and contracts, including plaintiff's insurance policy in question.

Although defendant asserts that the place of performance for payment of premiums and benefits is in

Cuba, the contract itself provides—"All payments regarding this policy, made either by the company or the insured, will be made in the City of New Orleans in legal currency of the United States of America."

"The law of the place of performance generally governs the contract and its discharge." Conflict of Laws, Sec. 385; Zimmerman v. Sutherland, 274 U.S. 253, 47 S. Ct. 625, 7 L. Ed. 1034.

The provisions of the contract for payment of the policy in New Orleans in United States dollars controls therefore unless defendant shows that such terms have been effectively changed. Defendant urges that this has been changed by virtue of a Cuban resolution prior to Castro, that after April, 1951, the United States dollar would cease to be legal tender in Cuba and that all contracts theretofore payable in dollars would be payable only in pesos. Defendant also asserts post-Castro law =568, prohibiting defendant from paying any monies to Cuban nationals anywhere except in Cuba, but counsel very wisely does not assert any argument of an extra-territorial effect, that such a Cuban law could affect the defendant in this bastion of freedom.

Of interest in this respect is Anglo-Continentale Treuhand, A.G. v. St. Louis Southwestern Rwy. Co., CCA 2 1936, 81 Fed. 2d 11, which deals with a contract providing for payment of bonds, either in gold or in the currency of several countries, including guilders in Holland. Plaintiff presented the bonds for payment in Amsterdam, giving rise to the question whether they thereby became payable in dollars calculated at the gold par of the guilder or, as defendant there contended, at the rate of exchange in

New York. Plaintiff's choice prevailed. Defendant asserted the congressional joint resolution removing the United States from the gold standard, urging that such U. S. law thus changed the choice provided in the contract. The court held to the contrary, and said at page 12—

> " . . . In its impact upon alien obligees as well, if construed as the defendant wishes, the resolution would have results which we ought not to impute to Congress gratuitously. It may be too much to say that a statute would be void which should undertake to discharge a citizen from a contract with an alien to be performed abroad; conceivably if the alien had to seek the obligor here, the statute would protect him. Yet no court of the place of performance would pay the least attention to it, if the citizen or his property fell within its power; by the law of most civilized countries the legality of the performance of a contract depends upon the law of the place of performance, and a contract is enforceable, if lawful by the law of the place of making when made, and if the performance is lawful by the law of the place of performance when due. Certainly that is true of our own law. Restatement of Conflict of Laws, ¤360. If the resolution had meant to prescribe otherwise, it would in substance have been an invasion of the prerogative of other states, and would be properly resented as contrary to the implications of mutual comity; we are justified in insisting that a statute must make such an intent plain beyond any doubt . . . "

Does the pre-Castro resolution effective in 1951

changing method of payment from dollars to pesos abrogate the private contract of insurance here? I do not believe that it does, absent recognition or adoption thereof by the parties which I do not find from the evidence. To grant such effect would of course be contrary to our basic precepts of contract and constitutional law. Defendant cites various cases recognizing actions of foreign countries and contrary to such principles, which point out that the nationals of those countries are bound by their own laws even though they do not comport with our recognized and cherished standards against abrogation of contract and confiscation without due compensation. Many of those cases deal directly with the particular res or property involved, as bank accounts, vessels, etc. See Salinoff v. Standard Oil Co., 262 N.Y. 220, 186 N.E. 679, 89 A.L.R. 345, U. S. v. Belmont, 30 U.S. 324, 81 L. Ed. 1134; Tillman v. Nat'l. City Bank of N. Y., 118 Fed.2d 631; Bernstein v. Van Heyghen, etc., 163 Fed.2d 246; Banco de Espana v. Federal Reserve Bank, 114 Fed.2d 438; Pons v. Republic of Cuba, 294 Fed.2d 925; Pasos v. Pan American Airways, 229 Fed.2d 271; The Clavereck, 264 Fed. 276; American Banana Co. v. United Fruit Co., 213 U.S. 347, 53 L.Ed. 826.

The burden of defendant's argument in this respect is that Cuban nationals are bound by such Cuban laws so as to prevent a decree on the subject contract against defendant. These cases have been studied. The trouble with defendant's contention is the express provision of an independent, private contract here, upon which plaintiff relied and remains entitled to rely and the fact that the evidence shows that payments of premiums were continued to be made in United States dollars in compliance with the terms of the contract so that both parties continued to recognize the contract and not the Cuban reso-

lution. It appears from the evidence that on some occasions pesos may have been used but converted to dollars in making premium payments.

To hold as defendant urges would make it impossible for foreign nationals to rely upon United States contracts and the express provisions thereof which would be reasonable inducements to such contracts. Neither can this court accept a proposition that would be in effect unilateral in avoiding liability. Seizure of defendant's business as unfortunate and abhorrent as it may be, is perhaps an incident risk of defendant doing business in a revolutionary climate. The seizure was of the defendant's —not the plaintiff's—interests and is not the same as the cases which defendant cites regarding confiscation of property which was the very subject matter of such other suits. Nor is there proof here of a novation which might effectively substitute the foreign government for the defendant as insurer as in Tillman v. National City Bank of N. Y., supra. Mutuality is of course an essential to a novation.

The case of Dougherty v. Equitable Life Assurance Society, 226 N.Y. 71, 193 N.E. 897, cited by defendant as in point, is distinguished by the express provisions in the contracts there that they were payable in Russian rubles from funds in Russia and were to be controlled by Russian law. Similarly Heinne v. N. Y. Life Ins. Co., 50 Fed. 2d 382, is distinguished where policies provided for payment in German marks. The Dougherty opinion notes at page 899—"The right to a sum of money due upon contract is to be determined by the terms of that contract the world over."

The court cannot justify a tendered distinction which would deny justice to Cuban nationals under these circumstances and rejects the contention that the courts of this country should not afford a forum to these distressed plaintiffs who find themselves homeless and without remedy in their own country. We would not forget the inscription on the Statue of Liberty from another great and grateful people, of France, in 1884—

"Not like the brazen giant of Greek fame,
With conquering limbs astride from land to land;
Here at our sea-washed, sunset gates shall stand
A mighty woman with a torch, whose flame,
Is the imprisoned lightning, and her name
Mother of Exiles. From her beacon-hand
Glows world-wide welcome; her mild eyes command
The air-bridged harbor that twin cities frame.
'Keep ancient lands, your storied pomp' cries she
With silent lips. "Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore,
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door!"

"The New Colossus" by Emma Lazarus.

We are still worthy of those challenging words in these present challenging days.

Accordingly the court finds and it is ordered that the plaintiff is entitled to pay and the defendant is required to accept the payment of premiums in United States dollars in accordance with the terms of the policy of insurance herein questioned and that such policy is in full force

and effect upon payment of tenders made and all premiums due to date and that the respective parties are bound by all the terms thereof, and that upon maturity, if all payments of premiums and requirements of plaintiff be met, the defendant will become obligated to the plaintiff in accordance with the terms of said policy.

It is further ordered that plaintiff is entitled to recover and that he do have and recover of and from the defendant an attorney's fee for services herein rendered in a sum to be fixed and awarded against the defendant as a reasonable attorney's fee herein upon testimony thereon being presented or upon affidavits if agreed by counsel.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT
JANUARY TERM, A. D. 1963

CASE NO. 62-624

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

vs.

MARIE LORIDO,
Appellee.

Opinion filed May 14, 1963

An Appeal from the Circuit Court for Dade County, Hal P. Dekle, Judge.

Dixon, DeJarnette, Bradford, Williams, McKay & Kimbrell, for appellant.

Ray A. Munson, for appellee.

Before PEARSON, C. J., and HORTON and HENDRY, JJ.

PER CURIAM.

Affirmed on the authority of Pan American Life Insurance Co. v. Recio, Fla.App.1963, ___ So.2d ___. [Case No. 62-452, opinion filed May 7, 1963, not yet reported.]

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

CASE NO. 62-624

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

vs.

MARIE LORIDO,
Appellee.

PETITION FOR REHEARING

Comes now PAN-AMERICAN LIFE INSURANCE COMPANY, Appellant herein, and moves this Honorable Court to grant a rehearing of this cause, and for grounds thereof shows:

1. The opinion in this case affirms the judgment of the lower court on the authority of the opinion of this court in the case of PAN-AMERICAN LIFE INSURANCE COMPANY v. RECIO (Case No. 62-452).

2. Your petitioner has filed a petition for rehearing in the last mentioned case, a true copy of which is attached hereto and made a part hereof, and your petitioner adopts the statements therein contained as the grounds of this petition.

3. The opinion of this court in the RECIO case did not refer to or otherwise pass upon the defense asserted by your petitioner in that case based upon Cuban Law No. 568, the Bretton Woods Agreement relating to the International Monetary Fund, and the Federal legislation pertaining thereto (22 U.S.C.A. 286 et seq.). Your petitioner assumes that this was due to the fact that this court had previously stricken from your petitioner's brief in the RECIO case the section relating to this defense. No such action was taken in the present case and the sufficiency of this defense was argued both in the briefs and in oral argument. An express ruling by this court upon such an important matter as a Federal executive agreement approved by both Houses of the Congress and legislated in part into the law of the United States (22 U.S.C.A. 286 h) would be of great assistance to other courts which will be called upon to pass on this matter in other cases. The legal questions presented by this defense are of such importance that they should not be disposed of **sub silentio.**

Respectfully submitted,

DIXON, DeJARNETTE, BRADFORD, WILLIAMS, McKAY & KIMBRELL
9th Floor, Dade Federal Building
Miami, Florida

By: s/ James A. Dixon
Attorneys for Appellant

PETITION FOR REHEARING

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

CASE NO. 62-452

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant;

vs.

AGUSTIN GOYTISOLO RECIO,
Appellee.

Comes now PAN-AMERICAN LIFE INSURANCE COMPANY, Appellant herein, and petitions this Honorable Court to grant a rehearing in this cause, and as grounds for this petition shows:

1. The opinion in this case was filed May 7, 1963. A few days later on May 14, 1963, this Court filed an opinion in Case No. 61-827, styled NATIONAL INSTITUTE OF AGRARIAN REFORM v. TERRY KANE, et al.

2. Your petitioner respectfully suggests that these two opinions are inconsistent with each other, as will hereafter be pointed out.

(a) The confiscation complained of in the Kane

case was effected under Resolution No. 3, of October 24, 1960, of the Republic of Cuba. If the Court will refer to the text of this resolution attached to the Answer of your petitioner in the Circuit Court, the Court will see that AGENCIO de TRACTORES y EQUIPOS, of which the Kanes were stockholders, is listed as one of the concerns expropriated by section 1 of that resolution. Its name appears in Group XXI in that section. This is the same resolution which expropriated your petitioner whose name appears in Group XX of this same section.

(b) In section 2 of this resolution, it is provided that the Cuban State is substituted as the obligor on the liabilities of the expropriated concerns. See also the affidavit of the Cuban lawyer, DR. MENDIGUTIA.

(c) In the Kane case, the opinion recognizes that the expropriation effected by the first section of the resolution was an "act of state" on which the courts of this country will not sit in judgment.

(d) In this case, the court apparently says that the substitution of obligors effected by the second section of the resolution was not an "act of state" and refused to recognize its effectiveness upon the rights of Cuban nationals. Your petitioner is thereby de-

prived of a defense accruing to it under Cuban law.

(e) The application of the "act of state" doctrine in the Kane case frees an agency of the Republic of Cuba from liability to an American citizen. The refusal to apply that doctrine in this case imposes a liability on an American company from which the law of the plaintiff's sovereign has relieved it.

3. This Court has apparently in this case relied heavily upon the case of BANCO NACIONAL de CUBA v. SABBATINO, 307 F.2d 845, notwithstanding the fact that in that case certiorari has been granted by the U. S. Supreme Court, although this fact is adverted to in the Kane opinion. The opinion in this case also relies upon the case of RODRIGUEZ v. PAN-AMERICAN, 311 F.2d 429, which is now pending in the U. S. Supreme Court on petition for certiorari. The Court in this case has apparently overlooked the fact that neither of these cases is final.

4. The opinion in this case states that your petitioner relies "most heavily" upon the case of DOUGHERTY v. EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, 266 N. Y. 71, 193 N. E. 897, which the opinion then proceeds to distinguish on its particular facts. The Court has apparently overlooked the fact that your petitioner relies even more heavily upon cases such as BERNSTEIN v. VAN HEYGHEN

FRERES, 163 F.2d 246, and PONS v. REPUBLIC OF CUBA, 294 F.2d 925, (cert. denied in both) which are recognized as controlling authority in the Kane opinion. Your petitioner also relies heavily upon the decision in TILLMAN v. NATIONAL CITY BANK, 118 F.2d 631 (cert. denied 314 U. S. 1000, 62 S. Ct. 96, 86 L. Ed. 521) in its holding that a recognized foreign sovereign has the power to force an "involuntary novation" upon its nationals.

5. Since the opinion in this case does not discuss or even cite the case of PAN-AMERICAN LIFE INS. CO. v. BLANCO, 311 F.2d 424, your petitioner can only assume that the Court has overlooked it.

6. The opinion in this case says that your petitioner asks that this Court "enforce the expropriation decrees entered by the present government of Cuba." This portion of the opinion does not fairly state the position of your petitioner. That position is that Resolution No. 3 not only expropriated the Cuban assets of your petitioner but also, and most important, substituted the Cuban State as the obligor upon prior liabilities. Recognition of this *fact* is a far cry from "enforcing expropriation decrees". This resolution is used as a shield by your petitioner, not as a sword. In the Kane case, the opinion permitted it to be used as a shield by the NATIONAL INSTITUTE OF AGRARIAN REFORM. In the SABBATINO case, the National Bank of Cuba was using the resolution as a sword, asking

affirmative relief based upon it. We believe that the Court in this case has overlooked this distinction.

Respectfully submitted,

DIXON, DeJARNETTE, BRADFORD, WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Building,
Miami 32, Florida,

By: JAMES A. DIXON
Attorneys for Appellant.

CERTIFICATE OF SERVICE

I CERTIFY that on this 15th day of May, 1963, a true copy of the foregoing Petition for Rehearing was mailed to CAREY, GOODMAN, TERRY, DWYER & AUSTIN, 650 Seybold Building, Miami 32, Florida, the attorneys of record for the Appellee herein.

JAMES A. DIXON

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

v.

AGUSTIN GOYTISOLO RECIO,
Appellee.

No. 62-452

District Court of Appeal of Florida,
Third District.
May 7, 1963

Rehearing Denied June 26, 1963

PEARSON, TILLMAN, Chief Judge.

The defendant-insurance company appeals a summary final decree for plaintiff-policyholder in an action for declaratory decree. The complaint sought a declaration that the policyholder was entitled to the cash-surrender value of the insurance policy. We affirm.

The complaint of the policyholder made a copy of the insurance policy an exhibit. It appears without conflict that the defendant, Pan-American Life Insurance Company, is a corporation under the laws of the State of Louisiana, having its principal office in New Orleans, Louisiana. The policy provides for payment thereunder in United States dollars in New Orleans, Louisiana. The defendant-insurance company answered alleging that the

acts of the Cuban Government in seizing its assets located in Cuba excused it from further performance under the contract of insurance sued upon. The court granted a summary decree for the plaintiff.

[1] It is the general rule that unless a contrary intention is expressed in the contract, matters connected with the performance are regulated by the law prevailing at the place of performance. Scudder v. Union National Bank of Chicago, 91 U.S. 406, 23 L.Ed. 245 (1875); Brown v. Ford Motor Co., 48 F.2d 732 (10th Cir. 1931); Repsold v. New York Life Ins. Co., 216 F.2d 479 (7th Cir. 1954); see also Restatement, Conflict of Laws, §358 (1934).

[2] Clearly then, a contract of a United States corporation payable in the United States in United States dollars cannot be governed by Cuban laws as to the method of performance.

This Court has recently had occasion to make exhaustive inquiry into problems similar to those presented in this appeal. See Confederation Life Ass'n v. Ugalde, Fla.App. 1963, 151 So.2d 315. Under the law set forth in that opinion, the fact that the contract involved in the instant appeal is to be paid in the United States is determinative of the issue of whether the law of this country governs the method of performance.

The additional factor which is present in this case is the contention of the insurance company that the acts of the Cuban Government in seizing the Company's assets located in Cuba excused the Company from further performance under the contract sued upon. In its answer the defendant-appellant pleaded as one of its defenses that

in July of 1960, the Republic of Cuba enacted Law No. 851 which authorized the issuance of resolutions of expropriation, and pursuant thereto, on October 24, 1960, Resolution No. 3 was promulgated, expropriating the Cuban assets of the Pan American Life Insurance Company and substituting the Cuban state as the obligor on existing policies.

After the filing of the answer, the plaintiff moved for a summary final decree. In opposition to the motion the defendant submitted two affidavits, one of Dr. Fernando C. Mendigutia, a Cuban lawyer now resident in Miami, the other of Mr. J. V. Bird, formerly the general manager and agent for Pan American Life Insurance Company in Cuba. In that portion of Dr. Mendigutia's affidavit which is relevant to the defense now discussed, he sets forth his opinion that Law No. 851 of July, 1960, authorized the issuance of decrees of expropriation and nationalization, and that pursuant thereto on October 24, 1960, Resolution No. 3 was signed which expropriated the Cuban assets of Pan American, substituting the Cuban state as the obligor on the Company's Cuban policies including the policy in this suit. Mr. Bird's affidavit sets forth that on October 26, 1960, he delivered all of Pan American's assets to the Cuban administrator appointed under the expropriation resolution.

Appellant argues that expropriation decrees of recognized foreign sovereigns, insofar as they affect the rights of nationals of that sovereign, have been given effect in the courts of this country. In support of this proposition, it cites many cases holding that under the act of state doctrine the courts of the United States will not recognize a right of action based upon the claimed invalidity of an

act of the government of a foreign state affecting its own nationals in its own territory. It is not necessary for us to discuss and analyze the recent developments of the act of state doctrine as this doctrine has been applied to the decrees of the present government of Cuba. This task has been undertaken elsewhere. See Banco Nacional de Cuba v. Sabbatino, 307 F.2d 845 (2d Cir.1962); Rodriguez v. Pan American Life Ins. Co., 311 F.2d 429 (5th Cir.1962).

[3] We do not find that the act of state doctrine is applicable to the situation here before us. The appellant, an American insurance company, did business not only in the Republic of Cuba, but in the United States. As previously mentioned, the policy here involved was payable in the United States. Its contact with the law of Cuba was that it was sold there to a Cuban citizen. A fair reading of the policy makes it apparent that an important provision was that the policyholder might travel to the United States and that the policy would be paid in the United States. It must therefore be concluded that the purpose of this provision was to obligate the American company to pay in America without regard to the vicissitudes of Cuban law.

The appellant, insurance company, now asks that the courts enforce the expropriation decrees entered by the present government of Cuba. It asks the enforcement of the decrees by means of an affirmative defense; that is, the denial of the policyholder's recovery because of the existence of the decrees. As authority for its defense, the appellant relies most heavily upon the case of Dougherty v. Equitable Life Assur. Soc'y of United States, 266 N.Y. 71, 193 N.E. 897 (1934). It there appeared that Equitable Life and a number of other American life in-

surance companies had qualified to do business in Russia. They issued policies in Russia to Russian nationals. The Russian branches of the American companies were expropriated by the Soviet Government, which substituted a system of state support of its nationals and abolished the institution of insurance. After recognition of Soviet Russia by the United States, test cases were filed in New York against the companies for various benefits under the policies. The plaintiffs were successful in the lower courts but in the highest appellate court, they failed. As we gather the basis for the holding, it is that inasmuch as the contracts involved were Russian contracts payable in Russia, in Russian funds, and exclusively from Russian assets, the liability would be governed by Russian law. We do not think that this reasoning is applicable to the present case where the total assets of the appellant are pledged to the payment of the contract, and the contract is payable in the United States. As we have previously set forth, it is our holding that the law of the place of payment, or United States law, applies to this contract. Therefore, the expropriation decrees are not a bar to the action upon the policy.

Affirmed.

COURT OF APPEAL
FOURTH CIRCUIT
STATE OF LA.

NO. 771

CARLOS MANUEL THEYE y AJURIA,

Plaintiff-Appellee

vs.

PAN AMERICAN LIFE INSURANCE CO.,

Defendant-Appelant

APPEAL FROM THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS NO. 394-783, HONORABLE CLARENCE DOWLING, JUDGE

A. WILMOT DALFERES
JUDGE AD HOC

JUNE 14, 1963

(Court composed of Judge Jess Johnson, Earl H. Edwards ad hoc, and A Wilmot Dalferes ad hoc)

CHAFFE, McCALL, PHILLIPS, BURKE & HOPKINS;
JAMES G. BURKE, JR.,
Attorneys for Plaintiff-Appellee

G. FRANK PURVIS, JR. & SOLOMON S. GOLDMAN,
Attorneys for Defendant-Appellant

REVERSED AND RENDERED

Plaintiff, a Cuban National born in Cuba, applied to Pan-American Life Insurance Company for a policy of life insurance in Havana, Cuba, through the Havana represenative of defendant insurance company in May of 1928. For several years prior to the issuing date of this policy, defendant was authorized to do business in the Republic of Cuba, after complying with Cuban statutory regulations pertaining to the insurance field.

Plaintiff's application was in due course referred to the Home Office of defendant in New Orleans, Louisiana. Upon approval of the application, the policy in regular form, written in the Spanish language, was forwarded to the Havana agent of defendant who, after having it countersigned by an agency of the Cuban government, delivered same to the plaintiff. The plaintiff paid to defendant fourteen annual installments on the policy and in the year 1942 selected, as one of the alternatives in the policy provisions, to have the policy converted to a paid-up policy.

A payment known as a "persistency bonus" became due under the policy in 1948.

In 1948, the Cuban government adopted Law No. 13,

which provided that after 1951 United States currency might no longer be used in Cuba, and the Cuban peso would become the sole form of legal tender there. By the Monetary Law of Cuba of 1951, all contracts payable to or by Cuban Nationals were required to be paid in Cuban pesos only.

In November of 1948, in May of 1950, and in February of 1952, the plaintiff made loans against the policy in varied amounts and in each instance the proceeds of such loan in pesos were paid to plaintiff by a check drawn on the Havana, Cuba, office of the National City Bank of New York. Each of such loans to defendant company was repaid by plaintiff, who likewise made the payment in Cuban pesos. All the payments were made in Cuba to defendant's Cuban agent and deposited in a Cuban bank.

In January of 1959, the Castro Government came into power after a revolution. The government of the United States recognized and maintained diplomatic relations with the Cuban government until about October 26, 1960.

From 1928, the date of the issuance of the policy in controversy, until some date subsequent to the date of the nationalization of respondent insurance company, plaintiff continued to live in Cuba as a Cuban National.

Subsequent to the nationalization of respondent's business, plaintiff left Cuba and is now a refugee in the United States. Upon his arrival in the United States he appeared at the office of defendant's company in New Orleans and demanded the cash surrender value of the

policy. Upon the refusal of defendant to pay the same, this action followed.

This matter was submitted to the Court for summary judgment on admissions, interrogatories, and stipulation.

The trial Court rendered judgment in favor of plaintiff and against defendant in the amount of SEVEN THOUSAND NINETY AND NO/100 ($7090.00) DOLLARS. From this judgment defendant has appealed.

It is elementary law that a sovereign government, having a definite interest in insurance contracts, can enact legislation for the protection of its citizens, controlling the insurance business within its bounds.[1] As the United States Supreme Court said in Osborn v. Ozlin, 310 U.S. 763,

> "The state may fix insurance rates, German Alliance Ins. Co. v. Lewis, 233 U.S. 389, 34 S. Ct. 612, 58 L. Ed. 1011, L.R.A. 1915 C, 1189; it may regulate the compensation of agents, O'Gorman & Young v. Hartford Ins. Co., 282 U.S. 251, 51 S. Ct. 130, 75 L. Ed. 324, 72 A.L.R. 1163; it may curtail drastically the area of free contract, National Union Fire Ins. Co. v. Wanberg, 260 U.S. 71, 43 S. Ct. 32, 67 L. Ed. 136. States have controlled the expenses of insurance companies, New York Insurance Law, Consolidated Laws

[1] Buxton v. Mid-Western Insurance Co., 102 Fed. Supp. 500; Lewis v. Manufacturers Casualty Insurance Company, 107 Fed. Supp. 465; Boring et als v. Louisiana State Insurance Company, 154 Louisiana Reports 550, 970 So. 856; Strauss v. N. Y. Life Insurance Co., 15 So. (2) 61.

of New York, c. 28, Sect. 244, and Wisconsin Statutes, Sect. 201.21; and see Report of Joint (Armstrong) Insurance Investigation Committee (N.Y.) pp. 403-418 (1906). They have also promoted insurance through savings banks; see Berman, the Massachusetts System of Savings Bank Life Insurance, Bulletin No. 615, U.S. Bureau of Labor Statistics, and New York Laws of 1938, c. 471. In the light of all these exertions of state power it does not seem possible to doubt that the state could, if it chose, go into the insurance business, just as it can operate warehouses, flour mills, and other business ventures, Green v. Frazier, 253 U.S. 233, 40 S. Ct. 499, 64 L. Ed. 878, or might take 'the whole business of banking under its control.'"

Our learned brother, the trial Court, resolved the issues as follows:

"The Court is of the opinion that any laws or decrees of the Republic of Cuba passed subsequently to the date upon which the policy became a paid-up policy of insurance could have no effect upon the obligation which existed at that time.[*] Said obligation continued from that date to now be an obligation under the laws of the State of Louisiana and subject to and governed only by said Law, if the beneficiary or the insured under said policy presented himself in the State of Louisiana to enforce the obligations contained therein."

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[*]This policy became a paid-up policy in the year 1942, at the election of plaintiff.

It must be remembered that plaintiff is a Cuban National. It is a well established principle of law, recognized by all appellate Court decisions, that a recognized Sovereign Nation can make laws binding upon its nationals within its bounds. Chief Justice Marshall in The Antelope, 10 Wheat 67, 6 L. Ed. 268, said:

> "No principle of general law is more universally acknowledged than the perfect equality of Nations. Russia and Geneva have equal rights. It results from this equality that no one can rightfully impose a rule on another. Each legislates for itself, but its legislation can operate on itself alone."

When Castro rose to power, his government was recognized by the United States of America. Diplomatic relations were maintained between the United States and Cuba, until October 26, 1960. Plaintiff did not leave Cuba until November 4, 1960. On September 29, 1959, following Castro's rise to power, Law 568 was promulgated. That law prohibited Corporations doing business in Cuba, from making payments, or even making any entries in their books which would result in credit being made available to Cuban Nationals, except in Cuba, and without express authorization of the National Bank of Cuba. Violators of said law were subject to criminal penalties.

Further, on October 24, 1960, all of the affairs and assets of Pan American Life Insurance Company in Cuba were nationalized. The investments, properties and reserves of the said Company were taken over by the Cuban Government, which substituted itself as insurer and as-

sumed all liabilities of the Company; in fact, the business of the Company was carried on through a government appointed administrator.

Certainly any Sovereign Nation can and has the power to change the situs of its National's contracts. Further, a nation can and does frequently impair the obligations of contract. Even our own country did this in the Gold Clause Cases, 294 U.S. 240, 319, 330; 79 L. Ed. 885, 905, 912. We do have a provision in the United States Constitution preventing the States of the Union from enacting ex post facto law or laws impairing the obligation of contract. (See 10, U.S. Constitution). But it is within the Sovereign power of the United States Government to do these acts if in its National interests it sees fit to do so.

The Courts of this country can take judicial notice of treaties made between the U.S. Government and foreign governments. United States v. Reynes, 50 U.S. 127, 13 L. Ed. 74; LaCroix Fels v. Sarrazin, 15 Fed. 489. Further, our Courts will take judicial notice of the Acts of Congress and presidential proclamations. Williams v. Windham, 3 La. Appeals 127; Powell-Meyers Lumber Co. v. Tremont & Gulf Realty Co., 2 La. Appeals 164.

With these legal propositions before us, the Court must recognize and give effect to the Bretton Woods Agreement signed by the United States, Cuba, and some ninety-five sovereign Nations in 1945. Each signatory to the Compact, which included an International Monetary Fund, bound itself to take steps to implement the principles of the international accord, as part of its

domestic law. Our own Congress honored its commitment by enacting a statute to that effect. (22 USCA 286 et seq.)

Article VIII, Sec. 2 (b) of the Agreement, among other things, provided as follows:

> "Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member . . . shall be unenforceable in the territories of any member."

By accepting and implementing the above, our congress has undertaken to make the above principle, a part of our national law. On June 14, 1949, the International Monetary Fund, binding on all its members, including Cuba and the United States, issued the following interpretation of Art. VIII, Sec. 2(b):

> "An obvious result of the foregoing undertaking is that if a party to an exchange contract referred to in Article VIII, Sec. 2(b) seeks to enforce such a contract, the tribunal of the member country before which the proceedings are brought will not, on the ground that they are contrary to the public policy of the forum, refuse recognition of the exchange control regulations of the other member which are maintained or imposed consistently with the Fund Agreement. It also follows that such contracts will be treated as unenforceable notwithstanding that under private international law of the forum is not the law which governs the exchange contract or its performance . . . "

Cuban Law 568 of September 29, 1959, required payments between plaintiff and defendant be made in Cuba, regardless of the language of the contract. Despite this, plaintiff attempts to defy the decrees and laws of Cuba, the sovereign to whom he owed allegiance, to come into this country and collect his debt in the currency of another nation. This would nullify and frustrate his own sovereign's legislative will and powers.

Prior to the Bretton Woods Agreement, plaintiff's position might have been upheld. Our Courts have held it to be the public policy of the forum State to refuse to give effect to exchange control legislation of a foreign sovereign, where such was labelled by the forum as penal, punitive, confiscatory or violative of fundamental concepts of justice. In this connection, the Court calls attention to the cases and authorities cited therein of Menendez Rodriguez vs. Pan American Life Insurance Co., 311 Fed. 2d 429 and Pedro Menandez vs Aetna Insurance Co., 311 Fed. 2d, 432.

This Court believes, and so holds, that the Bretton Woods Agreement and our Acts of Congress (22 USCA 286, et seq.) supercede the principles enunciated in the above authorities, as to parties or nations who signed the agreement or treaty. It is now our national policy to deny enforcement, in the Court of this land, of contracts which would frustrate the exchange control regulations of another member of the agreement. Our Congress gave recognition to the will of the signatories to the agreement, declaring that the public policy of its members would be better served by a measure of collaboration among them designed to give effect to each other's exchange control regulations. The U. S. Supreme Court, in

Kolovrat vs. Oregon, 366 U.S. 187, 81 Supreme Court 922, 6 L. Ed. 218, decided May 1, 1961, interpreted the Bretton Woods Agreement as follows:

> "These treaties and agreements show that this Nation has adopted programs deemed desirable in bringing about, so far as can be done, stability and uniformity in the difficult field of world monetary controls and exchange . . . Doubtless, these agreements may fall short of that goal. But our National Government's powers have been exercised so far as deemed desirable and feasible toward that end, and the power to make policy with regard to such matters is a national one from the compulsion of both necessity and our constitution."

We find that the Court below disregarded the above treaty accord between the United States and Cuba and our own Congressional enactments to implement this agreement. Our Courts should not and cannot enforce a contract which transcends the sovereign will of Cuba touching on monetary contracts involving its own nationals. Plaintiff demands should have been rejected.

It must also be remembered that this defendant complied with the laws of Cuba in the operation of its Cuban Agency by maintaining reserves in Cuba to insure the payment of its Cuban obligations, including this policy. When the Castro government nationalized the insurance business, it took over those reserves and any other assets of this defendant in Cuba and went into the insurance business, of which this policy was a part. If this judgment by the trial court is enforced against this defendant in Lou-

isiana, it will amount to a payment of the obligation twice, for the reason that this defendant cannot now withdraw the amount of the judgment from its reserves and assets in Cuba which reserves were put up to insure payment of this and other policies in Cuba.

While it may be more advantageous for plaintiff to have sought relief in the Louisiana Courts and to have urged the application of Louisiana law to the terms of the contract as originally written, the selection of the forum does not dictate the application of the law of the forum; nor can the forum ignore the modifications of a contract by a sovereign government under its police powers and its domination over its citizens, especially when that sovereign government has been recognized by the Executive Department of the United States. There can be but one law applicable to this contract, and we hold that the present law of Cuba, which nationalized under Cuba's police powers the insurance business, including defendant's company, at a time when plaintiff was a resident and national of Cuba, is the applicable law.

The judgment of the District Court is reversed and plaintiff's suit is dismissed at his costs.

REVERSED AND RENDERED

NATIONAL INSTITUTE OF AGRARIAN REFORM,
Appellant,

vs.

TERRY KANE, doing business as Agencio de Tractores y Equipos, S.A., and individually, Terry Kane, H. A. Kane, and Louis Kane, as successors to and last Board of Directors of Agencio de tractores y Equipos, S.A., and as holders of a majority of stock of said inoperative former corporation on behalf of all stockholders thereof,
Appellees.

No. 61-827.

153 So.2d 40

District Court of Appeal of Florida
Third District
May 14, 1963.

Before PEARSON, TILLMAN, C. J., and CARROLL and HORTON, JJ.

PEARSON, TILLMAN, Chief Judge.

The National Institute of Agrarian Reform is an arm of the present government of Cuba. It was the defendant in the trial court in an action to recover damages for the expropriation of the assets of a Cuban corpora-

tion. The complaint alleged that the defendant-appellant " * * * did take over and seize and confiscate the business, assets, personalty and property, both real, personal and mixed, of your plaintiffs, but armed might, at the point of bayonets, without prior notice or warning of any sort. * * * "

The appellees are citizens of the United States who stated that they were the holders of a majority of the stock in the Cuban corporation. It was further stated that the action was brought on behalf of all the stockholders of the corporation. After finding jurisdiction over the subject matter and the parties, the trial judge granted final judgment for the plaintiffs in a non-jury trial. The defendant appeals this judgment.[1]

Since this litigation involves an arm of the sovereign government of Cuba as the defendant, we must first deal with the effect, if any, of the doctrine of sovereign immunity. Without detailing the various restrictions placed on this doctrine in recent years (none of which negate its use as a defense in the instant case), it prevents a court from entertaining jurisdiction over a foreign state or its property. On first glance, the correct disposition of the case herein discussed would appear to be a dismissal for lack of jurisdiction over the person of the defendant. The doctrine, however, is not self-executing. The procedure for raising a question of sovereign immunity is by making it a subject of diplomatic representation to the United States Department of State; and the claim, if recognized,

[1] By previous opinion, this Court sustained a plea of sovereign immunity from execution as to the judgment here reviewed. State ex rel. National Institute of Agrarian Reform v. Dekle, Fla.App.1962, 137 So.2d 581.

may be set forth and supported in an appropriate suggestion to the court by the Attorney General of the United States or an officer acting under his direction. Banco Nacional de Cuba v. Steckel, Fla. App. 1961, 134 So.2d 23. The record does not disclose that such action was taken. Therefore, the trial court could not have recognized such a defense, nor can it be considered on appeal. It is to be noted from a suggestion for sovereign immunity **from execution** was filed in this cause by the Attorney General of the United States subsequent to judgment in the court below. State ex rel. National Institute of Agrarian Reform v. Dekle, Fla. App. 1962, 137 So.2d 581. This, however, is not to be considered an immunity **from suit.**[2]

Since we have determined that jurisdiction over the person of the defendant existed, we now consider whether or not the trial court had jurisdiction over the subject matter. This requires an analysis of another doctrine of law—the so-called "act of state" doctrine. This doctrine has evolved in the courts whereby these judicial tribunals refuse to question the validity of legislative or executive acts of a foreign government performed within its own borders. See The Castro Government in American Courts: Sovereign Immunity and the Act of State Doctrine, 75 Harv. L.Rev. 1607 (1962). Although application of this doctrine usually involves an immunity extending to property rights which private citizens prove were originally vested in them by acts of the foreign sovereign, the basic

[2]In Harris & Co. Advertising, Inc. v. Republic of Cuba, Fla.App. 1961, 127 So.2d 687, we discussed the traditional rule which denies one sovereign the right to sit in court over another sovereign. The holding in the Harris case is not pertinent here since involved there was the doctrine of sovereign immunity (not applicable here as shown above) and the liability of a foreign sovereign to suit for commercial acts performed in this country.

reasoning underlying the doctrine would extend its application to a situation in which the sovereign is a party in litigation involving private rights affected by that foreign sovereign's acts.

Appellees would not deny the existence of the act of state doctrine, but seek to avoid its application on three grounds: first, the policies underlying this judicial self-restraint do not apply where the foreign act is a violation of international law; second, it is the proper policy for the courts of this country to refuse to recognize discriminatory confiscation of the property of Americans situated in Cuba; and third, the doctrine does not apply since the Department of State has announced that the effect of the foreign decree is for the court to determine. To support these arguments the appellant relies heavily upon the decision of the United States Court of Appeals for the Second Circuit in Banco Nacional de Cuba v. Sabbatino, 307 F.2d 845 (2nd Cir. 1962). At the time that our trial court entered its judgment, it had before it only the opinion in the case by the United States District Court which is reported at 193 F.Supp. 375 (S.D. N.Y. 1961). It is to be noted that the United States Supreme Court has granted certiorari in the matter.

In the Sabbatino case, a New York sugar brokerage firm had contracted to purchase certain sugar from a Cuban corporation, the majority of whose stock was owned by American residents. On the same day the commodity was being loaded for shipment, the Cuban government signed a resolution nationalizing and seizing all of the assets of the Cuban corporation. In order to secure the necessary consent of the Cuban government to ship the sugar, the broker made a second contract to purchase the

sugar from the Cuban government. The second contract was assigned to the Banco Nacional. When the broker resold the sugar, a New York State Court awarded the proceeds of the sale to a state receiver appointed to manage the remaining assets of the Cuban corporation which had been nationalized.

The Banco Nacional then brought its action in the United States court against the broker and the receiver, claiming conversion of the bills of lading and the proceeds of the sale. It asserted the act of state doctrine as a bar to any question as to its title. The District Court held the seizure to have been confiscatory and void under international law and entered judgment for the defendants.

Upon appeal, the United States Court of Appeals for the Second Circuit held that the Cuban decree of expropriation violated international law because it failed to provide adequate compensation and because it involved a retaliatory purpose and a discrimination against United States nationals. It held, therefore, that the title of the Banco Nacional to the sugar was invalid and affirmed the decision of the District Court which dismissed the complaint.

We find the Sabbatino opinions persuasive, but not determinative as applied to the facts of the instant case. In the Sabbatino case, the action was by a Cuban bank, an arm of the Cuban government, invoking the aid of a court of the United States to act affirmatively to enforce a foreign decree which was patently obnoxious to the public policy of the forum. If the court had applied the act of state doctrine, this would have been the necessary result. In the case before us, American nationals seek to

enforce a claim of conversion in Cuba because of the alleged invalidity of a decree of the Cuban government. There is a recognizable distinction between the refusal to enforce a foreign law which is repugnant to the public policy of the forum [See Loucks v. Standard Oil Co. of N. Y., 224 N.Y. 99, 120 N.E. 198 (1918)] and refusing to pass on the validity under the law of a foreign state of the acts of its officials [See Bernstein v. Van Heyghen Freres Societe Anonyme, 163 F.2d 246 (2nd Cir. 1947), cert. denied, 332 U.S. 772, 68 S.Ct. 88, 92 L.Ed. 357 (1947); Pons v. Republic of Cuba, 111 U.S. App. D.C. 141, 294 F.2d 925 (D.C. Cir. 1961), cert. denied, 368 U.S. 960, 82 S.Ct. 406, 7 L.Ed.2d 392 (1962). By analogy, we cannot declare the invalidity of a Cuban decree as a basis for creating a right of recovery in the plaintiff in this cause.

The appellees urge that inasmuch as the record in this case contains a telegram to the attorneys for the plaintiffs stating "* * * Effect in U. S. of decrees, etc. of Castro regime is question for court in which case heard", our government does not oppose inquiry by American courts into the legality of the act of the foreign government. It is then argued that this announcement constitutes an exception under which the act of state doctrine should not be applied. We are unable to agree with the effect appellees give to the telegram. The extent to which the telegram can be given effect is simply that the Executiv Department of the United States Government will not interpose itself one way or the other in this litigation.

To declare invalid an act of expropriation by the Cuban Government of the property of a Cuban corporation in Cuba because such act is discriminatory, arbitrary and confiscatory would be a denial of the sovereignty of

a foreign state. To do so would violate the tradition of judicial reluctance to act in areas of executive prerogative. In other words of one author, it would be " * * * an unnecessary excursion into an area in which the principals of law are elusive, political repercussions are imminent, and pronouncements of a municipal court have little extraterritorial effect save to offend a foreign sovereign." 110 U.Pa.L.Rev. 127 (1961).

While the actions of the Cuban Government may well do injury to the essence of justice as we view it, they are not our acts, nor are we called upon to enforce them. The idea of the seizure of private property without compensation is repugnant both to our constitution and our very way of life, but unfortunately these views are not accorded the same import in all nations. The Supreme Court of the United States has long recognized that the seizure of private property by a foreign government is an exercise of sovereignty. Oetjen v. Central Leather Co., 246 U.S. 297, 38 S.Ct. 309, 62 L.Ed. 726 (1918); Ricaud v. American Metal Co., 246 U.S. 304, 38 S.Ct. 312, 62 L.Ed. 733 (1918).

The highest court of our land has said that "Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory." Underhill v. Hernandez, 168 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 456 (1897). This appears to be the law of the land at the present time, and we will not depart from its mandate.

Having found that the trial court lacked jurisdiction of the subject matter, the judgment appealed is reversed and the complaint dismissed.

Reversed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 380

PAN-AMERICAN LIFE INSURANCE COMPANY,

Petitioner,

v.

MARIE LORIDO,

Respondent.

Appendix To Petition for a Writ of Certiorari to District Court of Appeal of Florida, Third District

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IN THE

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Appendix To Petition for a Writ of Certiorari to District Court of Appeal of Florida, Third District

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MINISTRY OF JUSTICE

LAW No. 568

(FOREIGN EXCHANGE CONTRABAND LAW)

I, Osvaldo Dorticos Torrado, President of the Republic of Cuba, do hereby proclaim that the following law has been enacted by the Council of Ministers and approved by me, to wit:

WHEREAS: Title II of Law No. 13 of December 23,

1948, provided for the organization of the Currency Stabilization Fund, and entrusted it with the fundamental mission of protecting the national currency on the exchange market, for which purpose the legislation supplementary thereto broadened the scope of its powers vesting it with the authority necessary for the regulation of international exchange transactions.

WHEREAS: During the years in which the tyranny was in power a constant drainage of foreign exchange was propitiated to cover the funds taken away by the beneficiaries of the deposed government, a practice which some interested parties are still trying to continue through speculation and by deviating the channels of incoming foreign exchange on which the nation depends, or by the remittance of foreign funds through illegal methods, thereby ostensibly delaying the restoration of our monetary reserves and the preferential application of the national resources to the economic development of the nation.

WHEREAS: It is necessary therefore, to define clearly and precisely the felonious acts constituting crimes against the economy of the nation, fixing the penalties applicable to the different degrees of criminal liability, and to confer upon the Currency Stabilization Fund and the judiciary the broad powers required for the protection of the general interests of the Republic.

NOW, THEREFORE: In pursuance of the powers vested in it, the Council of Ministers has resolved to enact the following

LAW NO. 568

Article 1 — For the purposes of this law, the following are considered felonies of monetary contraband:

* * *

6. To export currency or securities, or to transfer funds to points abroad by means of checks, transfers, drafts, letter-orders, orders of payment, compensations, travellers checks, letters of credit, reimbursements of collections, purchases or sales of passage tickets or through any other similar means, regardless of the origin or source of the funds, except for those cases authorized by the Currency Stabilization Fund, through a member bank or a firm duly authorized by Banco Nacional de Cuba.

7. To export or import national currency in excess of the limit that set now or hereafter by the Currency Stabilization Fund.

8. To establish credits in national currency for persons residing abroad or for residents of Cuba for the account of residents abroad.

9. To assign or transfer credits in national currency to residents abroad, make payments for their account in national currency and set up credits in bank accounts the holders whereof reside abroad without first complying with the rules issued by the Currency Stabilization Fund in this respect.

10. To receive and credit to bank accounts kept abroad, or to transfer to third parties collections made

abroad for business transacted or services rendered in Cuba, regardless of the source or origin of the respective funds.

11. To secure financing payable abroad in foreign currency without the prior authorization of the Currency Stabilization Fund, except for transactions of banks associated to the Banco Nacional de Cuba with their home offices or foreign correspondents, for the establishment of letters of credit, overdrafts and other normal activities of the banking business.

12. Any other violation or infringement of the rules of the Currency Stabilization Fund under which funds are transferred or remitted abroad in violation of the prohibitive rules of the same Fund or in a larger amount than is permitted thereby.

App. 5

CUBA
NATIONALIZATION LAW

July 6, 1960[1]

[Translation]

WHEREAS: The attitude assumed by the Government and legislative power of the United States of America of constant aggression for political purposes against the fundamental interests of the Cuban economy, emphatically evidenced by the amendment recently passed by the Congress of said country to the Sugar Act at the request of the executive power, by which the President of that nation is granted exceptional powers to reduce the participation of Cuban sugar in the sugar market of that country, as an arm of political action against Cuba, obliges the Revolutionary Government to adopt without hesitation, also the measures that it may deem pertinent for the defense of the national sovereignty and the free economic development of our country.

WHEREAS: Article 24 of the fundamental law authorizes the expropriation of properties referring to the regular law the naming of the authority competent to order the expropriation as well as the regulation of the procedure, and of the means and forms of payment.

WHEREAS: It is convenient for the achievement of the purposes proposed in the first WHEREAS clause of this law to grant to the President of the Republic and to the Prime Minister full powers to proceed with the na-

[1]Cuba. Gaceta Oficial, July 7, 1960; Folletos de Divulgacion Legislativa, XXII Leyes del Gobierno de la Revolution (julio 1960), p. 29.

tionalization of all concerns and properties of natural or juridical persons of the United States of America or of the concerns in which said persons have a majority interest or share, even though they may be organized under the Cuban laws, in order that in each future circumstance adequate measures for said purposes may be adopted.

THEREFORE: In use of the powers vested in it, the Council of Ministers has resolved to enact the following Law Number 851:

ARTICLE 1: The president of the Republic and the Prime Minister are authorized to order jointly by means of resolutions, whenever they may deem it convenient in defense of the national interest, the nationalization, through expropriation, of the properties or concerns belonging to natural or juridical persons, nationals of the United States of America, or the concerns in which said persons have a majority interest or participation even though they be organized under the laws of Cuba.

ARTICLE 2: The President of the Republic and the Prime Minister in the resolution in which they order the expropriation shall declare its necessity and the cause of public use or national interest that has caused it.

ARTICLE 3: The President of the Republic and the Prime Minister in the resolutions referred to in Article 1 shall also appoint the persons or organizations that shall have charge of the properties or concerns subject of the expropriation.

App. 7

RESOLUTION NO. 3

WHEREAS, The imperialist interests whose representatives control the Government of the United States of North America; in their intention to utilize every means which they consider effective to impede the consolidation of the Cuban Revolution, have continued committing aggressions, every day more unscrupulous and criminal, against the economy of the nation.

WHEREAS, Among the multiple measures adopted by the Government of the United States of North America, there stands out for its exceptional aggressiveness that of the general embargo on exportations from that country to Cuba with the intention of strangling our economy.

WHEREAS, That measure, in addition to violating the most elemental standards of international existence, constitutes an act of political coercion with which it pretends uselessly to weaken the popular force of the Cuban Revolution by creating difficulties for national supplies.

WHEREAS, It is evident that this conduct of the Government of the United States of North America reveals the desperation and impotence of imperialism conducted by that Government, each day with more virulence, to employ the most unjust aggressions against our country.

WHEREAS, It is the duty of the Revolutionary Government to defend the economy of the country.

WHEREAS, Moreover, it is fundamental for the

liberation and economic development of our country that the North American commercial and industrial firms be liquidated which presently constitute the remainder in our country of the financial capital of that country.

THEREFORE, In use of the powers with which we are vested, in accordance with the provisions of Law No. 851 of June (sic July), 1960.

RESOLVED

FIRST There is declared the nationalization by means of forced expropriation, and, consequently, there are adjudged in favor of the Cuban State in full dominium all the properties and firms located in the National Territory and the rights and actions resulting from the exploitation of these properties and concerns which are the property of natural and juridical persons, nationals of the United States of America or operators of firms in which nationals of that country have a predominant interest, as follows:

* * *

Group XX — Insurance Companies

Pan American Life Insurance Co.

* * *

SECOND, Therefore, the Cuban state is declared subrogated in place and grade of the natural and juridicial persons referred to in the preceding section with respect to the properties, rights and rights of action mentioned, as well as the assets and liabilities constituting the capital of the concerns referred to.

ARTICLES OF AGREEMENT OF THE INTERNATIONAL MONETARY FUND

The Governments on whose behalf the present Agreement is signed agree as follows:

Introductory Article

The International Monetary Fund is established and shall operate in accordance with the following provisions:

Article I

Purposes

The purposes of the International Monetary Fund are:

(i) To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.

(ii) To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.

(iii) To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.

(iv) To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.

(v) To give confidence to members by making the Funds resources available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures of national or international prosperity.

(vi) In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

The Fund shall be guided in all its decisions by the purposes set forth in this Article.

INTERNATIONAL MONETARY FUND.

Article VI. Capital Transfers.

Section 3. Controls of capital transfers.

Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3 (b), and in Article XIV, Section 2.

Article VIII. General Obligations of Members.

Section 1. Introduction

In addition to the obligations assumed under other articles of this Agreement, each member undertakes the obligations set out in this Article.

Section 2. Avoidance of restrictions on current payments.

(a) Subject to the provisions of Article VII, Section 3 (b), and Article XIV, Section 2, no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.

(b) Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, cooperate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement.

Article XVIII. Interpretation.

(a) Any question of interpretation of the provisions of this Agreement arising between any member and the Fund or between any members of the Fund shall be submitted to the Executive Directors for their decision. If the question particularly affects any member not entitled to appoint an executive director it shall be entitled to representation in accordance with Article XII, Section 3 (j).

(b) In any case where the Executive Directors have given a decision under (a) above, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the result of the reference to the Board the Fund may, so far as it deems necessary, act on the basis of the decision of the Executive Directors.

Article XIX. Explanation of Terms.

In interpreting the provisions of this Agreement the Fund and its members shall be guided by the following:

(i) Payments for current transactions means payments which are not for the purpose of transferring capital, and includes, without limitation:

(1) All payments due in connection with foreign trade, other current business, including services, and normal short-term banking and credit facilities;

(2) Payments due as interest on loans and as net income from other investments;

(3) Payments of moderate amount for amortization of loans or for depreciation of direct investments;

(4) Moderate remittances for family living expenses.

The Fund may, after consultation with the members concerned, determine whether certain specific transactions are to be considered current transactions or capital transactions.

UNITED STATES CODE ANNOTATED

Title 22. Foreign Relations and Intercourse.

International Monetary Fund and Bank for Reconstruction and Rehabilitation.

286. Acceptance of Membership by United States in International Monetary Fund.

The president is authorized to accept membership for the United States in the International Monetary Fund (hereinafter referred to as the "Fund"), and in the International Bank for Reconstruction and Development (hereinafter referred to as the "Bank"), provided for by the Articles of Agreement of the Fund and the Articles of Agreement of the Bank as set forth in the Final Act of the United Nations Monetary and Financial Conference dated July 22, 1944, and deposited in the archives of the Department of State.

286h. Status, privileges, and immunities of the United States.

The provisions of article IX, sections 2 to 9, both inclusive, and the first sentence of article VIII, section 2 (b), of the Articles of Agreement of the Fund, and the provisions of article VI, section 5 (i), and article VII, sections 2-9, both inclusive, of the Articles of Agreement of the Bank, shall have full force and effect in the United States and its Territories and possessions upon acceptance of membership by the United States in, and the establishment of, the Fund and the Bank, respectively.

LORIDO v. PAN AMERICAN LIFE INS. CO.

No. 61-L-791
Circuit Court, Dade County

June 6, 1962.

Hal P. Dekle, Circuit Judge

This action is at law by the surviving widow of the deceased insured. Plaintiff is named beneficiary in the policy in question. This case was duly tried before the court without a jury, there being no demand for jury trial.

The policy was issued in 1943 in New Orleans, Louisiana, but was delivered to the insured in Havana, Cuba, where he then lived and later died a Cuban national in 1960. There is no dispute that premiums have been duly paid. The issue arises by virtue of defendant's denial of liability on the grounds that the Cuban monetary decree of 1951 in pursuant of Cuban Law #13 of 1948, required all contracts theretofore payable in dollars to or by Cuban nationals in Cuba to be paid in Cuban pesos instead. Defendant contends that this modified the terms of the policy which provided for payment in United States dollars in New Orleans. Defendant additionally alleged that thereafter the insured agreed with the defendant that the terms of the policy be modified accordingly and submitted evidence that payments thereafter were in fact paid in pesos instead of dollars, thus adopting or ratifying the method of payment in pesos.

Defendant's t[illegible]rd position is that the confiscation of defendant's insurance business in Cuba by Cuban Resolution #3 of October 24, 1960 avoids any liability under this

contract and that a post-Castro law #568 in 1959 prohibited the payment of any monies to Cuban nationals anywhere except in Cuba.

The court has rejected these same contentions, save that regarding the alleged action of the parties in subsequent dealings in pesos for payments under this policy, in this court's opinion of even date in Raij v. Pan American Life Ins. Co., circuit court of Dade County, in chancery, no. 61-C-7089 [19 Fla. Supp. 162].

The court finds in this cause that on the issue of the asserted change of the provision of the policy regarding payment in dollars the insured by his actions in both paying premiums and receiving benefits in pesos thereby accepted the modification for such payment under Cuban law for the purposes of his insurance contract, and that the terms of the policy for payment in dollars were effectively modified, and the insured, and now his beneficiary, this plaintiff, is bound thereby but is entitled to recover benefits hereunder in Cuban pesos or the equivalent thereof in United States dollars at the present United States exchange rate, based upon the face amount of the policy, interest and other benefits provided in the policy, and accordingly it is ordered that plaintiff do have and recover of and from the defendant said sums upon application and calculation of the amount involved as above provided.

It is further ordered that plaintiff do have and recover of and from defendant the further sum of $1,500 in United States dollars hereby fixed and awarded as a reasonable attorney's fee for services hereby by plaintiff's attorney.

RAIJ v. PAN AMERICAN LIFE INS. CO.

No. 61-C-7089
Circuit Court, Dade County
June 6, 1962.

Hal P. Dekle, Circuit Judge

Plaintiff purchased from defendant in 1942 a life insurance policy which was issued from the defendant's home office in New Orleans but delivered in Cuba to the plaintiff, a Cuban national and a resident of Cuba at that time. This was a twenty year endowment policy and all premiums were paid to and accepted by defendant until November 1960, when the premium was refused and returned. Subsequent tenders of such premiums have been refused and plaintiff seeks a declaration of his rights to pay the premium and to require the defendant to accept them and further to declare that such policy is in full force and effect.

Defendant admits issuance of the policy and payment and tender of premiums but disclaims any further liability under the policy, inter alia, on the ground that the Castro Revolutionary Government of Cuba on October 24, 1960, by its now well known Resolution #3, forcibly expropriated the Cuban division of defendant insurance company and substituted the present Cuban Revolutionary Government as "obligor" on all of defendant's Cuban liabilities and contracts, including plaintiff's insurance policy in question.

Although defendant asserts that the place of performance for payment of premiums and benefits is in

Cuba, the contract itself provides—"All payments regarding this policy, made either by the company or the insured, will be made in the City of New Orleans in legal currency of the United States of America."

"The law of the place of performance generally governs the contract and its discharge." Conflict of Laws, Sec. 385; Zimmerman v. Sutherland, 274 U.S. 253, 47 S. Ct. 625, 7 L. Ed. 1034.

The provisions of the contract for payment of the policy in New Orleans in United States dollars controls therefore unless defendant shows that such terms have been effectively changed. Defendant urges that this has been changed by virtue of a Cuban resolution prior to Castro, that after April, 1951, the United States dollar would cease to be legal tender in Cuba and that all contracts theretofore payable in dollars would be payable only in pesos. Defendant also asserts post-Castro law #568, prohibiting defendant from paying any monies to Cuban nationals anywhere except in Cuba, but counsel very wisely does not assert any argument of an extra-territorial effect, that such a Cuban law could affect the defendant in this bastion of freedom.

Of interest in this respect is Anglo-Continentale Treuhand, A.G. v. St. Louis Southwestern Rwy. Co., CCA 2, 1936, 81 Fed. 2d 11, which deals with a contract providing for payment of bonds, either in gold or in the currency of several countries, including guilders in Holland. Plaintiff presented the bonds for payment in Amsterdam, giving rise to the question whether they thereby became payable in dollars calculated at the gold par of the guilder or, as defendant there contended, at the rate of exchange in

New York. Plaintiff's choice prevailed. Defendant asserted the congressional joint resolution removing the United States from the gold standard, urging that such U. S. law thus changed the choice provided in the contract. The court held to the contrary, and said at page 12—

> " . . . In its impact upon alien obligees as well, if construed as the defendant wishes, the resolution would have results which we ought not to impute to Congress gratuitously. It may be too much to say that a statute would be void which should undertake to discharge a citizen from a contract with an alien to be performed abroad; conceivably if the alien had to seek the obligor here, the statute would protect him. Yet no court of the place of performance would pay the least attention to it, if the citizen or his property fell within its power; by the law of most civilized countries the legality of the performance of a contract depends upon the law of the place of performance, and a contract is enforceable, if lawful by the law of the place of making when made, and if the performance is lawful by the law of the place of performance when due. Certainly that is true of our own law. Restatement of Conflict of Laws, ±360. If the resolution had meant to prescribe otherwise, it would in substance have been an invasion of the prerogative of other states, and would be properly resented as contrary to the implications of mutual comity; we are justified in insisting that a statute must make such an intent plain beyond any doubt . . . "

Does the pre-Castro resolution effective in 1951

changing method of payment from dollars to pesos abrogate the private contract of insurance here? I do not believe that it does, absent recognition or adoption thereof by the parties which I do not find from the evidence. To grant such effect would of course be contrary to our basic precepts of contract and constitutional law. Defendant cites various cases recognizing actions of foreign countries and contrary to such principles, which point out that the nationals of those countries are bound by their own laws even though they do not comport with our recognized and cherished standards against abrogation of contract and confiscation without due compensation. Many of those cases deal directly with the particular res or property involved, as bank accounts, vessels, etc. See Salinoff v. Standard Oil Co., 262 N.Y. 220, 186 N.E. 679, 89 A.L.R. 345, U. S. v. Belmont, 30 U.S. 324, 81 L. Ed. 1134; Tillman v. Nat'l. City Bank of N. Y., 118 Fed.2d 631; Bernstein v. Van Heyghen, etc., 163 Fed.2d 246; Banco de Espana v. Federal Reserve Bank, 114 Fed.2d 438; Pons v. Republic of Cuba, 294 Fed.2d 925; Pasos v. Pan American Airways, 229 Fed.2d 271; The Clavereck, 264 Fed. 276; American Banana Co. v. United Fruit Co., 213 U.S. 347, 53 L.Ed. 826.

The burden of defendant's argument in this respect is that Cuban nationals are bound by such Cuban laws so as to prevent a decree on the subject contract against defendant. These cases have been studied. The trouble with defendant's contention is the express provision of an independent, private contract here, upon which plaintiff relied and remains entitled to rely and the fact that the evidence shows that payments of premiums were continued to be made in United States dollars in compliance with the terms of the contract so that both parties continued to recognize the contract and not the Cuban reso-

lution. It appears from the evidence that on some occasions pesos may have been used but converted to dollars in making premium payments.

To hold as defendant urges would make it impossible for foreign nationals to rely upon United States contracts and the express provisions thereof which would be reasonable inducements to such contracts. Neither can this court accept a proposition that would be in effect unilateral in avoiding liability. Seizure of defendant's business as unfortunate and abhorrent as it may be, is perhaps an incident risk of defendant doing business in a revolutionary climate. The seizure was of the defendant's —not the plaintiff's—interests and is not the same as the cases which defendant cites regarding confiscation of property which was the very subject matter of such other suits. Nor is there proof here of a novation which might effectively substitute the foreign government for the defendant as insurer as in Tillman v. National City Bank of N. Y., supra. Mutuality is of course an essential to a novation.

The case of Dougherty v. Equitable Life Assurance Society, 226 N.Y. 71, 193 N.E. 897, cited by defendant as in point, is distinguished by the express provisions in the contracts there that they were payable in Russian rubles from funds in Russia and were to be controlled by Russian law. Similarly Heinne v. N. Y. Life Ins. Co., 50 Fed. 2d 382, is distinguished where policies provided for payment in German marks. The Dougherty opinion notes at page 899—"The right to a sum of money due upon contract is to be determined by the terms of that contract the world over."

The court cannot justify a tendered distinction which would deny justice to Cuban nationals under these circumstances and rejects the contention that the courts of this country should not afford a forum to these distressed plaintiffs who find themselves homeless and without remedy in their own country. We would not forget the inscription on the Statue of Liberty from another great and grateful people, of France, in 1884—

> "Not like the brazen giant of Greek fame,
> With conquering limbs astride from land to land;
> Here at our sea-washed, sunset gates shall stand
> A mighty woman with a torch, whose flame,
> Is the imprisoned lightning, and her name
> Mother of Exiles. From her beacon-hand
> Glows world-wide welcome; her mild eyes command
> The air-bridged harbor that twin cities frame.
> 'Keep ancient lands, your storied pomp' cries she
> With silent lips. 'Give me your tired, your poor,
> Your huddled masses yearning to breathe free,
> The wretched refuse of your teeming shore.
> Send these, the homeless, tempest-tost to me,
> I lift my lamp beside the golden door!'"
>
> "The New Colossus" by Emma Lazarus.

We are still worthy of those challenging words in these present challenging days.

Accordingly the court finds and it is ordered that the plaintiff is entitled to pay and the defendant is required to accept the payment of premiums in United States dollars in accordance with the terms of the policy of insurance herein questioned and that such policy is in full force

and effect upon payment of tenders made and all premiums due to date and that the respective parties are bound by all the terms thereof, and that upon maturity, if all payments of premiums and requirements of plaintiff be met, the defendant will become obligated to the plaintiff in accordance with the terms of said policy.

It is further ordered that plaintiff is entitled to recover and that he do have and recover of and from the defendant an attorney's fee for services herein rendered in a sum to be fixed and awarded against the defendant as a reasonable attorney's fee herein upon testimony thereon being presented or upon affidavits if agreed by counsel.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT
JANUARY TERM, A. D. 1963

CASE NO. 62-624

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

vs.

MARIE LORIDO,
Appellee.

Opinion filed May 14, 1963

An Appeal from the Circuit Court for Dade County, Hal P. Dekle, Judge.

Dixon, DeJarnette, Bradford, Williams, McKay & Kimbrell, for appellant.

Ray A. Munson, for appellee.

Before PEARSON, C. J., and HORTON and HENDRY, JJ.

PER CURIAM.

Affirmed on the authority of Pan American Life Insurance Co. v. Recio, Fla.App.1963, ___ So.2d ___. [Case No. 62-452, opinion filed May 7, 1963, not yet reported.]

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

CASE NO. 62-624

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

vs.

MARIE LORIDO,
Appellee.

PETITION FOR REHEARING

Comes now PAN-AMERICAN LIFE INSURANCE COMPANY, Appellant herein, and moves this Honorable Court to grant a rehearing of this cause, and for grounds thereof shows:

1. The opinion in this case affirms the judgment of the lower court on the authority of the opinion of this court in the case of PAN-AMERICAN LIFE INSURANCE COMPANY v. REGIO (Case No. 62-452).

2. Your petitioner has filed a petition for rehearing in the last mentioned case, a true copy of which is attached hereto and made a part hereof, and your petitioner adopts the statements therein contained as the grounds of this petition.

3. The opinion of this court in the RECIO case did not refer to or otherwise pass upon the defense asserted by your petitioner in that case based upon Cuban Law No. 568, the Bretton Woods Agreement relating to the International Monetary Fund, and the Federal legislation pertaining thereto (22 U.S.C.A. 286 et seq.). Your petitioner assumes that this was due to the fact that this court had previously stricken from your petitioner's brief in the RECIO case the section relating to this defense. No such action was taken in the present case and the sufficiency of this defense was argued both in the briefs and in oral argument. An express ruling by this court upon such an important matter as a Federal executive agreement approved by both Houses of the Congress and legislated in part into the law of the United States (22 U.S.C.A. 286 h) would be of great assistance to other courts which will be called upon to pass on this matter in other cases. The legal questions presented by this defense are of such importance that they should not be disposed of **sub silentio.**

Respectfully submitted,

DIXON, DeJARNETTE, BRADFORD,
WILLIAMS, McKAY & KIMBRELL
9th Floor, Dade Federal Building
Miami, Florida

By: s/ James A. Dixon
Attorneys for Appellant

PETITION FOR REHEARING

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

CASE NO. 62-452

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant;

vs.

AGUSTIN GOYTISOLO RECIO,
Appellee.

Comes now PAN-AMERICAN LIFE INSURANCE COMPANY, Appellant herein, and petitions this Honorable Court to grant a rehearing in this cause, and as grounds for this petition shows:

1. The opinion in this case was filed May 7, 1963. A few days later on May 14, 1963, this Court filed an opinion in Case No. 61-827, styled NATIONAL INSTITUTE OF AGRARIAN REFORM v. TERRY KANE, et al.

2. Your petitioner respectfully suggests that these two opinions are inconsistent with each other, as will hereafter be pointed out.

(a) The confiscation complained of in the Kane

case was effected under Resolution No. 3, of October 24, 1960, of the Republic of Cuba. If the Court will refer to the text of this resolution attached to the Answer of your petitioner in the Circuit Court, the Court will see that AGENCIO de TRACTORES y EQUIPOS, of which the Kanes were stockholders, is listed as one of the concerns expropriated by section 1 of that resolution. Its name appears in Group XXI in that section. This is the same resolution which expropriated your petitioner, whose name appears in Group XX of this same section.

(b) In section 2 of this resolution, it is provided that the Cuban State is substituted as the obligor on the liabilities of the expropriated concerns. See also the affidavit of the Cuban lawyer, DR. MENDIGUTIA.

(c) In the Kane case, the opinion recognizes that the expropriation effected by the first section of the resolution was an "act of state" on which the courts of this country will not sit in judgment.

(d) In this case, the court apparently says that the substitution of obligors effected by the second section of the resolution was not an "act of state" and refused to recognize its effectiveness upon the rights of Cuban nationals. Your petitioner is thereby de-

prived of a defense accruing to it under Cuban law.

(e) The application of the "act of state" doctrine in the Kane case frees an agency of the Republic of Cuba from liability to an American citizen. The refusal to apply that doctrine in this case imposes a liability on an American company from which the law of the plaintiff's sovereign has relieved it.

3. This Court has apparently in this case relied heavily upon the case of BANCO NACIONAL de CUBA v. SABBATINO, 307 F.2d 845, notwithstanding the fact that in that case certiorari has been granted by the U. S. Supreme Court, although this fact is adverted to in the Kane opinion. The opinion in this case also relies upon the case of RODRIGUEZ v. PAN-AMERICAN, 311 F.2d 429, which is now pending in the U. S. Supreme Court on petition for certiorari. The Court in this case has apparently overlooked the fact that neither of these cases is final.

4. The opinion in this case states that your petitioner relies "most heavily" upon the case of DOUGHERTY v. EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, 266 N. Y. 71, 193 N. E. 897, which the opinion then proceeds to distinguish on its particular facts. The Court has apparently overlooked the fact that your petitioner relies even more heavily upon cases such as BERNSTEIN v. VAN HEYGHEN

FRERES, 163 F.2d 246, and PONS v. REPUBLIC OF CUBA, 294 F.2d 925, (cert. denied in both) which are recognized as controlling authority in the Kane opinion. Your petitioner also relies heavily upon the decision in TILLMAN v. NATIONAL CITY BANK, 118 F.2d 631 (cert. denied 314 U. S. 1000, 62 S. Ct. 96, 86 L. Ed. 521) in its holding that a recognized foreign sovereign has the power to force an "involuntary novation" upon its nationals.

5. Since the opinion in this case does not discuss or even cite the case of PAN-AMERICAN LIFE INS. CO. v. BLANCO, 311 F.2d 424, your petitioner can only assume that the Court has overlooked it.

6. The opinion in this case says that your petitioner asks that this Court "enforce the expropriation decrees entered by the present government of Cuba." This portion of the opinion does not fairly state the position of your petitioner. That position is that Resolution No. 3 not only expropriated the Cuban assets of your petitioner but also, and most important, substituted the Cuban State as the obligor upon prior liabilities. Recognition of this *fact* is a far cry from "enforcing expropriation decrees". This resolution is used as a shield by your petitioner, not as a sword. In the Kane case, the opinion permitted it to be used as a shield by the NATIONAL INSTITUTE OF AGRARIAN REFORM. In the SABBATINO case, the National Bank of Cuba was using the resolution as a sword, asking

affirmative relief based upon it. We believe that the Court in this case has overlooked this distinction.

Respectfully submitted,

DIXON, DeJARNETTE, BRADFORD, WILLIAMS, McKAY & KIMBRELL,
9th Floor, Dade Federal Building,
Miami 32, Florida,

By: JAMES A. DIXON
Attorneys for Appellant.

CERTIFICATE OF SERVICE

I CERTIFY that on this 15th day of May, 1963, a true copy of the foregoing Petition for Rehearing was mailed to CAREY, GOODMAN, TERRY, DWYER & AUSTIN, 650 Seybold Building, Miami 32, Florida, the attorneys of record for the Appellee herein.

JAMES A. DIXON

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

v.

AGUSTIN GOYTISOLO RECIO,
Appellee.

No. 62-452

District Court of Appeal of Florida,
Third District.
May 7, 1963

Rehearing Denied June 26, 1963

PEARSON, TILLMAN, Chief Judge.

The defendant-insurance company appeals a summary final decree for plaintiff-policyholder in an action for declaratory decree. The complaint sought a declaration that the policyholder was entitled to the cash-surrender value of the insurance policy. We affirm.

The complaint of the policyholder made a copy of the insurance policy an exhibit. It appears without conflict that the defendant, Pan-American Life Insurance Company, is a corporation under the laws of the State of Louisiana, having its principal office in New Orleans, Louisiana. The policy provides for payment thereunder in United States dollars in New Orleans, Louisiana. The defendant-insurance company answered alleging that the

acts of the Cuban Government in seizing its assets located in Cuba excused it from further performance under the contract of insurance sued upon. The court granted a summary decree for the plaintiff.

[1] It is the general rule that unless a contrary intention is expressed in the contract, matters connected with the performance are regulated by the law prevailing at the place of performance. Scudder v. Union National Bank of Chicago, 91 U.S. 406, 23 L.Ed. 245 (1875); Brown v. Ford Motor Co., 48 F.2d 732 (10th Cir.-1931); Repsold v. New York Life Ins. Co., 216 F.2d 479 (7th Cir. 1954); see also Restatement, Conflict of Laws #358 (1934).

[2] Clearly then, a contract of a United States corporation payable in the United States in United States dollars cannot be governed by Cuban laws as to the method of performance.

This Court has recently had occasion to make exhaustive inquiry into problems similar to those presented in this appeal. See Confederation Life Ass'n v. Ugalde, Fla.App. 1963, 151 So.2d 315. Under the law set forth in that opinion, the fact that the contract involved in the instant appeal is to be paid in the United States is determinative of the issue of whether the law of this country governs the method of performance.

The additional factor which is present in this case is the contention of the insurance company that the acts of the Cuban Government in seizing the Company's assets located in Cuba excused the Company from further performance under the contract sued upon. In its answer the defendant-appellant pleaded as one of its defenses that

in July of 1960, the Republic of Cuba enacted Law No. 851 which authorized the issuance of resolutions of expropriation, and pursuant thereto, on October 24, 1960, Resolution No. 3 was promulgated, expropriating the Cuban assets of the Pan American Life Insurance Company and substituting the Cuban state as the obligor on existing policies.

After the filing of the answer, the plaintiff moved for a summary final decree. In opposition to the motion the defendant submitted two affidavits, one of Dr. Fernando C. Mendigutia, a Cuban lawyer now resident in Miami, the other of Mr. J. V. Bird, formerly the general manager and agent for Pan American Life Insurance Company in Cuba. In that portion of Dr. Mendigutia's affidavit which is relevant to the defense now discussed, he sets forth his opinion that Law No. 851 of July, 1960, authorized the issuance of decrees of expropriation and nationalization, and that pursuant thereto on October 24, 1960, Resolution No. 3 was signed which expropriated the Cuban assets of Pan American, substituting the Cuban state as the obligor on the Company's Cuban policies including the policy in this suit. Mr. Bird's affidavit sets forth that on October 26, 1960, he delivered all of Pan American's assets to the Cuban administrator appointed under the expropriation resolution.

Appellant argues that expropriation decrees of recognized foreign sovereigns, insofar as they affect the rights of nationals of that sovereign, have been given effect in the courts of this country. In support of this proposition, it cites many cases holding that under the act of state doctrine the courts of the United States will not recognize a right of action based upon the claimed invalidity of an

act of the government of a foreign state affecting its own nationals in its own territory. It is not necessary for us to discuss and analyze the recent developments of the act of state doctrine as this doctrine has been applied to the decrees of the present government of Cuba. This task has been undertaken elsewhere. See Banco Nacional de Cuba v. Sabbatino, 307 F.2d 845 (2d Cir.1962); Rodriguez v. Pan American Life Ins. Co., 311 F.2d 429 (5th Cir.1962).

[3] We do not find that the act of state doctrine is applicable to the situation here before us. The appellant, an American insurance company, did business not only in the Republic of Cuba, but in the United States. As previously mentioned, the policy here involved was payable in the United States. Its contact with the law of Cuba was that it was sold there to a Cuban citizen. A fair reading of the policy makes it apparent that an important provision was that the policyholder might travel to the United States and that the policy would be paid in the United States. It must therefore be concluded that the purpose of this provision was to obligate the American company to pay in America without regard to the vicissitudes of Cuban law.

The appellant, insurance company, now asks that the courts enforce the expropriation decrees entered by the present government of Cuba. It asks the enforcement of the decrees by means of an affirmative defense; that is, the denial of the policyholder's recovery because of the existence of the decrees. As authority for its defense, the appellant relies most heavily upon the case of Dougherty v. Equitable Life Assur. Soc'y of United States, 266 N.Y. 71, 193 N.E. 897 (1934). It there appeared that Equitable Life and a number of other American life in-

surance companies had qualified to do business in Russia. They issued policies in Russia to Russian nationals. The Russian branches of the American companies were expropriated by the Soviet Government, which substituted a system of state support of its nationals and abolished the institution of insurance. After recognition of Soviet Russia by the United States, test cases were filed in New York against the companies for various benefits under the policies. The plaintiffs were successful in the lower courts but in the highest appellate court, they failed. As we gather the basis for the holding, it is that inasmuch as the contracts involved were Russian contracts payable in Russia, in Russian funds, and exclusively from Russian assets, the liability would be governed by Russian law. We do not think that this reasoning is applicable to the present case where the total assets of the appellant are pledged to the payment of the contract, and the contract is payable in the United States. As we have previously set forth, it is our holding that the law of the place of payment, or United States law, applies to this contract. Therefore, the expropriation decrees are not a bar to the action upon the policy.

Affirmed.

COURT OF APPEAL
FOURTH CIRCUIT
STATE OF LA.

NO. 771

CARLOS MANUEL THEYE y AJURIA,
Plaintiff-Appellee

vs.

PAN AMERICAN LIFE INSURANCE CO.,
Defendant-Appelant

APPEAL FROM THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS NO. 394-783, HONORABLE CLARENCE DOWLING, JUDGE

A. WILMOT DALFERES
JUDGE AD HOC

JUNE 14, 1963

(Court composed of Judge Jess Johnson, Earl H. Edwards ad hoc, and A Wilmot Dalferes ad hoc)

CHAFFE, McCALL, PHILLIPS, BURKE & HOPKINS;
JAMES G. BURKE, JR.,
Attorneys for Plaintiff-Appellee

G. FRANK PURVIS, JR. & SOLOMON S. GOLDMAN,
Attorneys for Defendant-Appellant

REVERSED AND RENDERED

Plaintiff, a Cuban National born in Cuba, applied to Pan-American Life Insurance Company for a policy of life insurance in Havana, Cuba, through the Havana represenative of defendant insurance company in May of 1928. For several years prior to the issuing date of this policy, defendant was auth ized to do business in the Republic of Cuba, after complying with Cuban statutory regulations pertaining to the insurance field.

Plaintiff's application was in due course referred to the Home Office of defendant in New Orleans, Louisiana. Upon approval of the application, the policy in regular form, written in the Spanish language, was forwarded to the Havana agent of defendant who, after having it countersigned by an agency of the Cuban government, delivered same to the plaintiff. The plaintiff paid to defendant fourteen annual installments on the policy and in the year 1942 selected, as one of the alternatives in the policy provisions, to have the policy converted to a paid-up policy.

A payment known as a "persistency bonus" became due under the policy in 1948.

In 1948, the Cuban government adopted Law No. 13,

which provided that after 1951 United States currency might no longer be used in Cuba, and the Cuban peso would become the sole form of legal tender there. By the Monetary Law of Cuba of 1951, all contracts payable to or by Cuban Nationals were required to be paid in Cuban pesos only.

In November of 1948, in May of 1950, and in February of 1952, the plaintiff made loans against the policy in varied amounts and in each instance the proceeds of such loan in pesos were paid to plaintiff by a check drawn on the Havana, Cuba, office of the National City Bank of New York. Each of such loans to defendant company was repaid by plaintiff, who likewise made the payment in Cuban pesos. All the payments were made in Cuba to defendant's Cuban agent and deposited in a Cuban bank.

In January of 1959, the Castro Government came into power after a revolution. The government of the United States recognized and maintained diplomatic relations with the Cuban government until about October 26, 1960.

From 1928, the date of the issuance of the policy in controversy, until some date subsequent to the date of the nationalization of respondent insurance company, plaintiff continued to live in Cuba as a Cuban National.

Subsequent to the nationalization of respondent's business, plaintiff left Cuba and is now a refugee in the United States. Upon his arrival in the United States he appeared at the office of defendant's company in New Orleans and demanded the cash surrender value of the

policy. Upon the refusal of defendant to pay the same, this action followed.

This matter was submitted to the Court for summary judgment on admissions, interrogatories, and stipulation.

The trial Court rendered judgment in favor of plaintiff and against defendant in the amount of SEVEN THOUSAND NINETY AND NO/100 ($7090.00) DOLLARS. From this judgment defendant has appealed.

It is elementary law that a sovereign government, having a definite interest in insurance contracts, can enact legislation for the protection of its citizens, controlling the insurance business within its bounds.[1] As the United States Supreme Court said in Osborn v. Ozlin, 310 U.S. 763,

> "The state may fix insurance rates, German Alliance Ins. Co. v. Lewis, 233 U.S. 389, 34 S. Ct. 612, 58 L. Ed. 1011, L.R.A. 1915 C, 1189; it may regulate the compensation of agents, O'Gorman & Young v. Hartford Ins. Co., 282 U.S. 251, 51 S. Ct. 130, 75 L. Ed. 324, 72 A.L.R. 1163; it may curtail drastically the area of free contract; National Union Fire Ins. Co. v. Wanberg, 260 U.S. 71, 43 S. Ct. 32, 67 L. Ed. 136. States have controlled the expenses of insurance companies, New York Insurance Law, Consolidated Laws

[1]Buxton v. Mid-Western Insurance Co., 102 Fed. Supp. 500; Lewis v. Manufacturers Casualty Insurance Company, 107 Fed. Supp. 465; Boring et als v. Louisiana State Insurance Company, 154 Louisiana Reports 550, 970 So. 856; Strauss v. N. Y. Life Insurance Co., 15 So. (2) 61.

of New York, c. 28, Sect. 244, and Wisconsin Statutes, Sect. 201.21; and see Report of Joint (Armstrong) Insurance Investigation Committee (N.Y.) pp. 403-418 (1906). They have also promoted insurance through savings banks; see Berman, the Massachusetts System of Savings Bank Life Insurance, Bulletin No. 615, U.S. Bureau of Labor Statistics, and New York Laws of 1938, c. 471. In the light of all these exertions of state power it does not seem possible to doubt that the state could, if it chose, go into the insurance business, just as it can operate warehouses, flour mills, and other business ventures, Green v. Frazier, 253 U.S. 233, 40 S. Ct. 499, 64 L. Ed. 878, or might take 'the whole business of banking under its control.'"

Our learned brother, the trial Court, resolved the issues as follows:

> "The Court is of the opinion that any laws or decrees of the Republic of Cuba passed subsequently to the date upon which the policy became a paid-up policy of insurance could have no effect upon the obligation which existed at that time.[2] Said obligation continued from that date to now be an obligation under the laws of the State of Louisiana and subject to and governed only by said Law, if the beneficiary or the insured under said policy presented himself in the State of Louisiana to enforce the obligations contained therein."

[2]This policy became a paid-up policy in the year 1942, at the election of plaintiff.

It must be remembered that plaintiff is a Cuban National. It is a well established principle of law, recognized by all appellate Court decisions, that a recognized Sovereign Nation can make laws binding upon its nationals within its bounds. Chief Justice Marshall in The Antelope, 10 Wheat 67, 6 L. Ed. 268, said:

> "No principle of general law is more universally acknowledged than the perfect equality of Nations. Russia and Geneva have equal rights. It results from this equality that no one can rightfully impose a rule on another. Each legislates for itself, but its legislation can operate on itself alone."

When Castro rose to power, his government was recognized by the United States of America. Diplomatic relations were maintained between the United States and Cuba, until October 26, 1960. Plaintiff did not leave Cuba until November 4, 1960. On September 29, 1959, following Castro's rise to power, Law 568 was promulgated. That law prohibited Corporations doing business in Cuba, from making payments, or even making any entries in their books which would result in credit being made available to Cuban Nationals, except in Cuba, and without express authorization of the National Bank of Cuba. Violators of said law were subject to criminal penalties.

Further, on October 24, 1960, all of the affairs and assets of Pan American Life Insurance Company in Cuba were nationalized. The investments, properties and reserves of the said Company were taken over by the Cuban Government, which substituted itself as insurer and as-

sumed all liabilities of the Company; in fact, the business of the Company was carried on through a government appointed administrator.

Certainly any Sovereign Nation can and has the power to change the situs of its National's contracts. Further, a nation can and does frequently impair the obligations of contract. Even our own country did this in the Gold Clause Cases, 294 U.S. 240, 319, 330; 79 L. Ed. 885, 905, 912. We do have a provision in the United States Constitution preventing the States of the Union from enacting ex post facto law or laws impairing the obligation of contract. (See 10, U.S. Constitution). But it is within the Sovereign power of the United States Government to do these acts if in its National interests it sees fit to do so.

The Courts of this country can take judicial notice of treaties made between the U.S. Government and foreign governments. United States v. Reynes, 50 U.S. 127, 13 L. Ed. 74; LaCroix Fels v. Sarrazin, 15 Fed. 489. Further, our Courts will take judicial notice of the Acts of Congress and presidential proclamations. Williams v. Windham, 3 La. Appeals 127; Powell-Meyers Lumber Co. v. Tremont & Gulf Realty Co., 2 La. Appeals 164.

With these legal propositions before us, the Court must recognize and give effect to the Bretton Woods Agreement signed by the United States, Cuba, and some ninety-five sovereign Nations in 1945. Each signatory to the Compact, which included an International Monetary Fund, bound itself to take steps to implement the principles of the international accord, as part of its

domestic law. Our own Congress honored its commitment by enacting a statute to that effect. (22 USCA 286 et.seq.)

Article VIII, Sec. 2 (b) of the Agreement, among other things, provided as follows:

> "Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member . . . shall be unenforceable in the territories of any member."

By accepting and implementing the above, our congress has undertaken to make the above principle, a part of our national law. On June 14, 1949, the International Monetary Fund, binding on all its members, including Cuba and the United States, issued the following interpretation of Art. VIII, Sec. 2(b):

> "An obvious result of the foregoing under taking is that if a party to an exchange contract referred to in Article VIII, Sec. 2(b) seeks to enforce such a contract, the tribunal of the member country before which the proceedings are brought will not, on the ground that they are contrary to the public policy of the forum, refuse recognition of the exchange control regulations of the other member which are maintained or imposed consistently with the Fund Agreement. It also follows that such contracts will be treated as unenforceable notwithstanding that under private international law of the forum is not the law which governs the exchange contract or its performance . . . ."

Cuban Law 568 of September 29, 1959, required payments between plaintiff and defendant be made in Cuba, regardless of the language of the contract. Despite this, plaintiff attempts to defy the decrees and laws of Cuba, the sovereign to whom he owed allegiance, to come into this country and collect his debt in the currency of another nation. This would nullify and frustrate his own sovereign's legislative will and powers.

Prior to the Bretton Woods Agreement, plaintiff's position might have been upheld. Our Courts have held it to be the public policy of the forum State to refuse to give effect to exchange control legislation of a foreign sovereign, where such was labelled by the forum as penal, punitive, confiscatory or violative of fundamental concepts of justice. In this connection, the Court calls attention to the cases and authorities cited therein of Menendez Rodriguez vs. Pan American Life Insurance Co., 311 Fed. 3d 429 and Pedro Menandez vs Aetna Insurance Co., 311 Fed. 2d, 432.

This Court believes, and so holds, that the Bretton Woods Agreement and our Acts of Congress (22 USCA 286, et seq.) supercede the principles enunciated in the above authorities, as to parties or nations who signed the agreement or treaty. It is now our national policy to deny enforcement, in the Court of this land, of contracts which would frustrate the exchange control regulations of another member of the agreement. Our Congress gave recognition to the will of the signatories to the agreement, declaring that the public policy of its members would be better served by a measure of collaboration among them designed to give effect to each other's exchange control regulations. The U. S. Supreme Court, in

Kolovrat vs. Oregon, 366 U.S. 187, 81 Supreme Court 922, 6 L. Ed. 218, decided May 1, 1961, interpreted the Bretton Woods Agreement as follows:

> "These treaties and agreements show that this Nation has adopted programs deemed desirable in bringing about, so far as can be done, stability and uniformity in the difficult field of world monetary controls and exchange . . . Doubtless, these agreements may fall short of that goal. But our National Government's powers have been exercised so far as deemed desirable and feasible toward that end, and the power to make policy with regard to such matters is a national one from the compulsion of both necessity and our constitution."

We find that the Court below disregarded the above treaty accord between the United States and Cuba and our own Congressional enactments to implement this agreement. Our Courts should not and cannot enforce a contract which transcends the sovereign will of Cuba touching on monetary contracts involving its own nationals. Plaintiff demands should have been rejected.

It must also be remembered that this defendant complied with the laws of Cuba in the operation of its Cuban Agency by maintaining reserves in Cuba to insure the payment of its Cuban obligations, including this policy. When the Castro government nationalized the insurance business, it took over those reserves and any other assets of this defendant in Cuba and went into the insurance business, of which this policy was a part. If this judgment by the trial court is enforced against this defendant in Lou-

isiana, it will amount to a payment of the obligation twice, for the reason that this defendant cannot now withdraw the amount of the judgment from its reserves and assets in Cuba which reserves were put up to insure payment of this and other policies in Cuba.

While it may be more advantageous for plaintiff to have sought relief in the Louisiana Courts and to have urged the application of Louisiana law to the terms of the contract as originally written, the selection of the forum does not dictate the application of the law of the forum; nor can the forum ignore the modifications of a contract by a sovereign government under its police powers and its domination over its citizens, especially when that sovereign government has been recognized by the Executive Department of the United States. There can be but one law applicable to this contract, and we hold that the present law of Cuba, which nationalized under Cuba's police powers the insurance business, including defendant's company, at a time when plaintiff was a resident and national of Cuba, is the applicable law.

The judgment of the District Court is reversed and plaintiff's suit is dismissed at his costs.

REVERSED AND RENDERED

NATIONAL INSTITUTE OF AGRARIAN REFORM,
Appellant,

vs.

TERRY KANE, doing business as Agencio de Tractores y Equipos, S.A., and individually, Terry Kane, H. A. Kane, and Louis Kane, as successors to and last Board of Directors of Agencio de tractores y Equipos, S.A., and as holders of a majority of stock of said inoperative former corporation on behalf of all stockholders thereof,
Appellees.

No. 61-827

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153 So.2d 40

District Court of Appeal of Florida
Third District
May 14, 1963.

Before PEARSON, TILLMAN, C. J., and CARROLL and HORTON, JJ.

PEARSON, TILLMAN, Chief Judge.

The National Institute of Agrarian Reform is an arm of the present government of Cuba. It was the defendant in the trial court in an action to recover damages for the expropriation of the assets of a Cuban corpora-

tion. The complaint alleged that the defendant-appellant " * * * did take over and seize and confiscate the business, assets, personalty and property, both real, personal and mixed, of your plaintiffs, but armed might, at the point of bayonets, without prior notice or warning of any sort. * * * "

The appellees are citizens of the United States who stated that they were the holders of a majority of the stock in the Cuban corporation. It was further stated that the action was brought on behalf of all the stockholders of the corporation. After finding jurisdiction over the subject matter and the parties, the trial judge granted final judgment for the plaintiffs in a non-jury trial. The defendant appeals this judgment.[1]

Since this litigation involves an arm of the sovereign government of Cuba as the defendant, we must first deal with the effect, if any, of the doctrine of sovereign immunity. Without detailing the various restrictions placed on this doctrine in recent years (none of which negate its use as a defense in the instant case), it prevents a court from entertaining jurisdiction over a foreign state or its property. On first glance, the correct disposition of the case herein discussed would appear to be a dismissal for lack of jurisdiction over the person of the defendant. The doctrine, however, is not self-executing. The procedure for raising a question of sovereign immunity is by making it a subject of diplomatic representation to the United States Department of State; and the claim, if recognized,

[1] By previous opinion, this Court sustained a plea of sovereign immunity from execution as to the judgment here reviewed. State ex rel. National Institute of Agrarian Reform v. Dekle, Fla.App.1962, 137 So.2d 581.

may be set forth and supported in an appropriate suggestion to the court by the Attorney General of the United States or an officer acting under his direction. Banco Nacional de Cuba v. Steckel, Fla. App. 1961, 134 So.2d 23. The record does not disclose that such action was taken. Therefore, the trial court could not have recognized such a defense, nor can it be considered on appeal. It is to be noted from a suggestion for sovereign immunity **from execution** was filed in this cause by the Attorney General of the United States subsequent to judgment in the court below. State ex rel. National Institute of Agrarian Reform v. Dekle, Fla. App. 1962, 137 So.2d 581. This, however, is not to be considered an immunity **from suit.**[2]

Since we have determined that jurisdiction over the person of the defendant existed, we now consider whether or not the trial court had jurisdiction over the subject matter. This requires an analysis of another doctrine of law—the so-called "act of state" doctrine. This doctrine has evolved in the courts whereby these judicial tribunals refuse to question the validity of legislative or executive acts of a foreign government performed within its own borders. See The Castro Government in American Courts: Sovereign Immunity and the Act of State Doctrine, 75 Harv. L.Rev. 1607 (1962). Although application of this doctrine usually involves an immunity extending to property rights which private citizens prove were originally vested in them by acts of the foreign sovereign, the basic

[2]In Harris & Co. Advertising, Inc. v. Republic of Cuba, Fla.App. 1961, 127 So.2d 687, we discussed the traditional rule which denies one sovereign the right to sit in court over another sovereign. The holding in the Harris case is not pertinent here since involved there was the doctrine of sovereign immunity (not applicable here as shown above) and the liability of a foreign sovereign to suit for commercial acts performed in this country.

reasoning underlying the doctrine would extend its application to a situation in which the sovereign is a party in litigation involving private rights affected by that foreign sovereign's acts.

Appellees would not deny the existence of the act of state doctrine, but seek to avoid its application on three grounds: first, the policies underlying this judicial self-restraint do not apply where the foreign act is a violation of international law; second, it is the proper policy for the courts of this country to refuse to recognize discriminatory confiscation of the property of Americans situated in Cuba; and third, the doctrine does not apply since the Department of State has announced that the effect of the foreign decree is for the court to determine. To support these arguments the appellant relies heavily upon the decision of the United States Court of Appeals for the Second Circuit in Banco Nacional de Cuba v. Sabbatino, 307 F.2d 845 (2nd Cir. 1962). At the time that our trial court entered its judgment, it had before it only the opinion in the case by the United States District Court which is reported at 193 F.Supp. 375 (S.D. N.Y. 1961). It is to be noted that the United States Supreme Court has granted certiorari in the matter.

In the Sabbatino case, a New York sugar brokerage firm had contracted to purchase certain sugar from a Cuban corporation, the majority of whose stock was owned by American residents. On the same day the commodity was being loaded for shipment, the Cuban government signed a resolution nationalizing and seizing all of the assets of the Cuban corporation. In order to secure the necessary consent of the Cuban government to ship the sugar, the broker made a second contract to purchase the

sugar from the Cuban government. The second contract was assigned to the Banco Nacional. When the broker resold the sugar, a New York State Court awarded the proceeds of the sale to a state receiver appointed to manage the remaining assets of the Cuban corporation which had been nationalized.

The Banco Nacional then brought its action in the United States court against the broker and the receiver, claiming conversion of the bills of lading and the proceeds of the sale. It asserted the act of state doctrine as a bar to any question as to its title. The District Court held the seizure to have been confiscatory and void under international law and entered judgment for the defendants.

Upon appeal, the United States Court of Appeals for the Second Circuit held that the Cuban decree of expropriation violated international law because it failed to provide adequate compensation and because it involved a retaliatory purpose and a discrimination against United States nationals. It held, therefore, that the title of the Banco Nacional to the sugar was invalid and affirmed the decision of the District Court which dismissed the complaint.

We find the Sabbatino opinions persuasive, but not determinative as applied to the facts of the instant case. In the Sabbatino case, the action was by a Cuban bank, an arm of the Cuban government, invoking the aid of a court of the United States to act affirmatively to enforce a foreign decree which was patently obnoxious to the public policy of the forum. If the court had applied the act of state doctrine, this would have been the necessary result. In the case before us, American nationals seek to

enforce a claim of conversion in Cuba because of the alleged invalidity of a decree of the Cuban government. There is a recognizable distinction between the refusal to enforce a foreign law which is repugnant to the public policy of the forum [See Loucks v. Standard Oil Co. of N. Y., 224 N.Y. 99, 120 N.E. 198 (1918)] and refusing to pass on the validity under the law of a foreign state of the acts of its officials [See Bernstein v. Van Heyghen Freres Societe Anonyme, 163 F.2d 246 (2nd Cir. 1947), cert. denied, 332 U.S. 772, 68 S.Ct. 88, 92 L.Ed. 357 (1947); Pons v. Republic of Cuba, 111 U.S. App. D.C. 141, 294 F.2d 925 (D.C. Cir. 1961), cert. denied, 368 U.S. 960, 82 S.Ct. 406, 7 L.Ed.2d 392 (1962). By analogy, we cannot declare the invalidity of a Cuban decree as a basis for creating a right of recovery in the plaintiff in this cause.

The appellees urge that inasmuch as the record in this case contains a telegram to the attorneys for the plaintiffs stating " * * * Effect in U. S. of decrees, etc. of Castro regime is question for court in which case heard", our government does not oppose inquiry by American courts into the legality of the act of the foreign government. It is then argued that this announcement constitutes an exception under which the act of state doctrine should not be applied. We are unable to agree with the effect appellees give to the telegram. The extent to which the telegram can be given effect is simply that the Executiv Department of the United States Government will not interpose itself one way or the other in this litigation.

To declare invalid an act of expropriation by the Cuban Government of the property of a Cuban corporation in Cuba because such act is discriminatory, arbitrary and confiscatory would be a denial of the sovereignty of

a foreign state. To do so would violate the tradition of judicial reluctance to act in areas of executive prerogative. In other words of one author, it would be " * * * an unnecessary excursion into an area in which the principals of law are elusive, political repercussions are imminent, and pronouncements of a municipal court have little extraterritorial effect save to offend a foreign sovereign." 110 U.Pa.L.Rev. 127 (1961).

While the actions of the Cuban Government may well do injury to the essence of justice as we view it, they are not our acts, nor are we called upon to enforce them. The idea of the seizure of private property without compensation is repugnant both to our constitution and our very way of life, but unfortunately these views are not accorded the same import in all nations. The Supreme Court of the United States has long recognized that the seizure of private property by a foreign government is an exercise of sovereignty. Oetjen v. Central Leather Co., 246 U.S. 297, 38 S.Ct. 309, 62 L.Ed. 726 (1918); Ricaud v. American Metal Co., 246 U.S. 304, 38 S.Ct. 312, 62 L.Ed. 733 (1918).

The highest court of our land has said that "Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory." Underhill v. Hernandez, 168 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 456 (1897). This appears to be the law of the land at the present time, and we will not depart from its mandate.

Having found that the trial court lacked jurisdiction of the subject matter, the judgment appealed is reversed and the complaint dismissed.

Reversed.

In the Supreme Court of the United States

OCTOBER TERM, 1963

Nos. 379, 380

PAN-AMERICAN LIFE INSURANCE COMPANY,
PETITIONER

v.

MARIE LORIDO

ON PETITIONS FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA AND TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

MEMORANDUM FOR THE UNITED STATES

By order of the Court, dated April 6, 1964, the Solicitor General was invited to express the views of the United States with respect to this case. For the reasons outlined below, we believe that this case does not present any important question of federal law.

Respondent, the beneficiary under an insurance policy issued by petitioner upon the life of her late husband, brought this action in Florida (where she presently resides) for the payment of benefits claimed to

be due under the policy (Pet. App. 16). The policy had been issued by petitioner, a Louisiana corporation, in 1943, in New Orleans, Louisiana, and was delivered to the insured, a Cuban national, in Havana, Cuba (Pet. App. 16). It provided that payments by both parties of all obligations would be made in United States currency in New Orleans (Pet. App. 16). The insured duly paid the premiums until his death in Cuba in 1960 (Pet. App. 16).

In contesting the widow's right to the proceeds of the policy, petitioner's chief argument has been that certain decrees of the Cuban Government extinguished its liability under the policy and that, under the act-of-state doctrine, which precludes courts of this country from inquiring into the validity of foreign governmental acts committed in the foreign sovereign's territory, the Florida courts were required to give effect to the Cuban Acts. Specifically, petitioner relies upon a 1959 law allegedly making it unlawful for any Cuban national to receive payment of a debt anywhere except in Cuba (Petition 5; Pet. App. 3-4) and a 1960 law expropriating petitioner's assets in Cuba and purportedly substituting the Cuban Government as obligor with respect to petitioner's liabilities (Pet. App. 5-8). In addition to the argument that these Cuban laws and the act-of-state doctrine require an American court to recognize the petitioner's exoneration from liability under the policy, the petitioner also relies upon Article VIII(2)(b) of the Articles of Agreement of the International Monetary Fund (the Bretton Woods Agreement), 60 Stat. 1401, 1411 (Pet. App. 27).

The Circuit Court of Dade County, Florida, rejecting the petitioner's basic contentions, held that, since the place of performance under the insurance policy was the United States and not Cuba, the Cuban decrees relied upon could not relieve the petitioner from its duty to perform in accordance with the terms of the policy (Pet. App. 17-23).[1] The District Court of Appeal of Florida affirmed without opinion (Pet. App. 25), and the Supreme Court of Florida denied certiorari.

1. The Florida courts have held that the law of Louisiana (the place of performance and the place of petitioner's incorporation and principal office), and not the law of Cuba (the place of the insured's residence), determines the rights of the parties under the insurance policy which is the subject of this case. This holding presents no substantial question of federal law. In particular, the act-of-state doctrine has no application to the facts of this case.

The principle precluding inquiry by our courts into the validity of foreign acts of state, and requiring the recognition of rights derived from such governmental acts, applies only to acts affecting property or rights within the acting sovereign's territorial jurisdiction.[2]

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[1] Because the insured had made and received payments in pesos instead of dollars as a result of a 1951 Cuban monetary decree, the court held that the parties had, by their conduct, agreed to payment in pesos instead of dollars (Pet. App. 16, 17). The court did *not* find that a similar novation occurred with respect to the place of payment. This remained New Orleans, pursuant to the written contract.

[2] The only possible exception to this limitation is where there is a significant policy of our national government re-

Thus, Chief Justice Fuller's classic statement of the act-of-state doctrine is that "the courts of one country will not sit in judgment on the acts of the government of another *done within its own territory.*" (Emphasis supplied.) *Underhill* v. *Hernandez*, 168 U.S. 250, 252. See, also, *Banco Nacional de Cuba* v. *Sabbatino*, decided March 23, 1964, slip op., pp. 1, 13, 21, 28. The Cuban acts relied upon by petitioner allegedly purported to extinguish petitioner's liability to make payment in the United States and to prohibit the insured from receiving payment in the United States. To give effect to these laws would be to accord them an extraterritorial application which has never been required under the act-of-state doctrine.

The only act of the Government of Cuba which dealt with property or rights located in Cuba was the expropriation of petitioner's Cuban property. This expropriation could not determine petitioner's obligation to perform its contracts with third parties outside Cuba in circumstances where the contracts provided for performance in places other than Cuba.

2. Further review is not warranted with respect to petitioner's other contention—that granting recovery to the respondent is contrary to Article VIII(2)(b) of the International Monetary Fund Articles of Agreement. In April of this year, Cuba withdrew from the International Monetary Fund. The provisions of Ar-

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quiring that extra-territorial effect be accorded a foreign governmental act in a particular case. See *United States* v. *Belmont*, 301 U.S. 324; *United States* v. *Pink*, 315 U.S. 203. No similar federal policy exists in the present case.

ticle VIII(2)(b) are for the benefit of member states and not for the benefit of private parties. Since Cuba is no longer a member of the Fund and since the date of proposed relief determines the applicability of Article VIII(2)(b), a decree granting recovery to the petitioner will not violate the provisions of the Agreement. See *Stephen* v. *Zivnostenska Banka, National Corporation*, 140 N.Y.S. 2d 323, 326.

In the view of the United States, therefore, this case does not present any substantial question of federal law or policy.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

MAY 1964.

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IN THE

Supreme Court of the United States

October Term, 1962

Nos. 379 AND 380

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

v.

MARIE LORIDO,
Respondent.

Brief of Respondent and Appendix Thereto

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IN THE

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Nos. 379 and 380

PAN-AMERICAN LIFE INSURANCE COMPANY,
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v.

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Respondent.

Brief of Respondent and Appendix Thereto

Marie Lorido respectfully prays that this Court refuse to grant the relief sought by Pan-American Life Insurance Company. Petitioner has filed, simultaneously, two separate petitions in this Court. The first seeks the issuance of a writ of certiorari to the Supreme Court of Florida. The second prays for the issuance of a writ of certiorari to the District Court of Appeal of Florida, Third District. Petitioner freely admits, on Page 2 of both Petitions, that its reason for so doing is that its counsel is unsure to which of these state courts the writ should be directed.

REASONS RELIED ON FOR DENIAL OF THE WRITS AND BRIEF ARGUMENT IN SUPPORT THEREOF

1. Petitioner has not exhausted its remedy in the

state courts. Florida Appellate Rules, 1962 Revision, provide that an unsuccessful litigant may apply to the Supreme Court for a rehearing. Petitioner chose not so to do. Instead, it invokes the jurisdiction of this Court, improvidently. **Hammerstein v. Superior Court of California, et al.**, 341 U.S. 491, rehearing denied 342 U.S. 843.

2. Pan-American Life Insurance Company, by seeking writs of certiorari to two separate state courts, to review the merits of a single case, places the burden of choice upon this Court. Obviously, this Court should not entertain both Petitions and grant a separate writ to each of the two appellate courts.

3. Petitioner argues, in invoking the jurisdiction of this Court, that this case involves a Federal question of substance, either pointedly overlooked in the decision at the trial level, or passed upon **sub silentio** by the appellate courts in a way probably not in accord with applicable decisions of this Court. Yet petitioner, having asserted the defense of contravention of a Federal statute and treaty even in its initial pleadings, chose to prosecute its defense in a manner at variance with the established rules of appellate procedure in this state. Petitioner chose to appeal the trial court's decision to the District Court of Appeal of Florida. Petitioner sought, thereafter, to petition the Supreme Court of Florida for a writ of certiorari to the District Court. Florida Appellate Rules, 1962 Revision, the pertinent text of which is printed in the Appendix to this Brief at page 1, provide, as a matter of right, a) that an appeal from the trial courts may be taken directly to the Supreme Court from a final judgment passing directly upon the validity of a Federal statute or treaty, and b) an appeal to the Supreme Court from

a decision of a district court of appeal passing initially upon the validity of a Federal statute or treaty. We can only assume petitioner, did not seriously contend the involvement of a Federal question, or that its own deliberate choice of state appellate procedure would pave the way for the invocation of the jurisdiction of this Court.

A review on writ of certiorari is not a matter of right, but of sound judicial discretion. For the reasons cited above, we urge the Court, respectfully, to refuse jurisdiction to grant the writs.

CONCLUSION

It is respectfully submitted that these petitions be denied.

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1962

No. 379, 380

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

v.

MARIE LORIDO,
Respondent.

Appendix to Brief of Respondent

FLORIDA APPELLATE RULES, 1962 REVISION

Rule 3.14 Rehearings

a. TIME FOR. Unless further time is allowed, rehearings must be applied for by petition in writing within 15 days after the filing of the decision or order of the Court.

b. CONTENTS OF PETITION. The petition for rehearing shall not assume a new ground or position from that taken in the original argument or briefs upon which the cause was submitted, and must set forth concisely, and without argument, the alleged omissions, oversights, causes or grounds on which it is based.

FLORIDA APPELLATE RULES, 1962 REVISION

Rule 2.1 The Supreme Court

* * * * *

(5) JURISDICTION OF THE SUPREME COURT

(a) Appeals from trial courts may be taken directly to the Supreme Court, as a matter of right, only from judgments imposing the death penalty, from final judgments or decrees passing directly upon the validity of a state statute or a federal statute or treaty, or construing a controlling provision of the Florida or Federal Constitution, ...

(b) Appeals from district courts of appeal may be taken to the Supreme Court, as a matter of right, only from decisions initially passing upon the validity of a state statute, a federal statute or treaty, or initially construing a controlling provision of the Florida or Federal Constitution. . . . .

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have, in accordance with the requirement of Rule 33, sub-paragraph 3(b) of the Rules of the Supreme Court of the United States, personally delivered a true copy of the foregoing Brief of Respondent and Appendix Thereto to JAMES A. DIXON, ESQ., counsel of record for Petitioner, and MESSRS. DIXON, DeJARNETTE, BRADFORD, WILLIAMS, McKAY & KIMBRELL, at their offices on the 9th Floor, Dade Federal Building, 101 East Flagler Street, Miami, Florida, this ____ day of September, 1963.

_____

Counsel of Record for Respondent

SEP 24 1963

IN THE

Supreme Court of the United States

October Term, 1962

Nos. 379 and 380

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

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Respondent.

REPLY BRIEF OF PETITIONER

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IN THE

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Respondent.

REPLY BRIEF OF PETITIONER

ARGUMENT

The Respondent's Brief in opposition to the Petition for Certiorari attempts to make the point that the Petitioner herein did not exhaust its State Court remedies because it did not move for a re-hearing in the Supreme Court of Florida.

This is a strange contention in view of the decision of this Court in **Market Street Railway Company v. Railroad Commission of California**, 324 U.S. 548, holding that the decision of the Appellate Court is, as to the unsuccessful party litigant, final as soon as issued, even though the Court has power to open it up by granting a Petition for re-hearing.

The Respondent's Brief, in ground 3, seems to suggest that the District Court of Appeal of Florida, Third District, lacked jurisdiction because exclusive jurisdiction by appeal was vested in the Supreme Court of Florida. It also suggests that the Supreme Court of Florida lacked jurisdiction because the case came before it on Petition for Certiorari to the intermediate Appellate Court rather than on direct appeal from the trial Court.

Such an argument is specious, in that it ignores the admirable flexibility of the Florida Appellate Rules, which permit, and encourage the exercise of appellate jurisdiction to promote the efficient administration of justice, not limited by technicalities of appellate procedure.

Florida Appellate Rule 2.1(5)(d) reads as follows:

> "(d) When the jurisdiction of an Appellate Court has been improvidently invoked, that Court may of its own motion or on motion of either party to the cause enter an order transferring it to the Court having jurisdiction. Five days' notice of such motion or proposed action shall be given to the other parties. Notices of appeal and other papers filed prior to the transfer shall have the same force and effect as if filed in the proper Court and as of the time when filed in the Court from which the transfer was made."

Under this rule, the District Court of Appeal could simply have transferred the case to the Supreme Court of Florida, if that was the only Court of appropriate jurisdiction.

Furthermore, Rule 2.1(5)(a), which is relied on by the Respondent, merely gives the appealing party the option to by-pass the intermediate Court of Appeal in seeking appellate review of the cases falling within the scope of this section of the rule.

If the Supreme Court of Florida has the sole and exclusive jurisdiction for appellate review of the classes of cases mentioned in paragraph (5)(a), as the Respondent seems to argue, then Rule 2.1(5)(b) becomes completely meaningless, since the District Court of Appeal would lack any jurisdiction ever to decide cases of these classes.

None of the arguments advanced by the Respondent in opposition to the grant of certiorari by this Court have validity, and the Petition for Certiorari should be granted.

Respectfully submitted,

DIXON, DeJARNETTE, BRADFORD, WILLIAMS, McKAY & KIMBRELL

By: JAMES A. DIXON

Attorneys for Petitioner

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief of Petitioner was mailed to MR. RAY A. MUNSON, Attorney for Respondent, Ingraham Building, Miami, Florida, this 25 day of September, 1963.